

Comparative Study on Legal Certainty of Consumer Protection Regarding E-Commerce Transactions, Between Indonesia, India and the United States

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ABSTRACT

In both conventional and electronic buying and selling agreements, the protection of consumer rights should be the main concern of business actors. Although there are already regulations governing consumer protection, until now there are still frequent violations of consumer rights, especially in e-commerce transactions. This article is juridical-normative research that compares the laws and regulations concerning consumer protection law in e-commerce transactions between Indonesia, India, and the United States. Through comparative studies and analysis using data sources from the literature, this study explores how the legal certainty of consumer protection in e-commerce transactions in Indonesia is being achieved. In addition, this research also describes the comparison regarding the legal certainty of consumer protection in e-commerce transactions in Indonesia between India and the United States based on the United Nations Guidelines for Consumer Protection. Furthermore, this study provides a prescription for how the legal certainty of consumer protection in e-commerce transactions in Indonesia should be when viewed from a comparison of consumer protection laws in e-commerce transactions in India and the United States.

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1. INTRODUCTION

E-Commerce is one example of internet development.¹ The definition of "e-commerce" generally refers to payments made using computers or other electronic equipment.²

¹ Bashar H. Malkawi. (2006). "E-Commerce in Light of International Trade Agreements: The WTO and the United States-Jordan Free Trade Agreement." *International Journal of Law and Information Technology* 15(2): 154.

One of the impacts of e-commerce is the development of a competitive business climate which provides many advantages for consumers, namely lower prices and a more diverse selection of goods.³

E-Commerce is one of the main contributors to the growth of the digital industry in Indonesia. With the increasing number of internet users and more entrepreneurs migrating their businesses to e-commerce platforms, Indonesia is on its way to witnessing strong e-commerce growth.⁴ Other than that, the new emerging COVID-19 pandemic has made internet transactions more common. Therefore, the government needs to formulate a good legal protection policy for consumers to support the effectiveness of the existence of e-commerce in the community.

Besides bringing many conveniences to consumers and business actors, e-commerce transactions also bring several new problems related to consumer rights. These problems include: (i) the exploitation of consumers because they cannot directly see or touch the goods they ordered; (ii) the lack of certainty of whether the consumers have received adequate information regarding the products; (iii) the lack of transaction security and privacy; (iv) unbalanced risk assignment because generally for buying and selling on the internet, the payment has been paid off by the consumer but the goods are not necessarily received immediately; and (v) cross-border transactions that raise questions about which country's legal jurisdiction applies.⁵ If it is associated with consumer rights in Article 4 Law No. 8 of 1999 concerning Consumer Protection, then in e-commerce transactions, consumer rights are very exposed to be violated.⁶ This is because in e-commerce transactions the position of consumers is in a weaker bargaining position compared to business actors.⁷ Various violations of consumer rights in e-commerce transactions generally occur due to the lack of legal certainty of consumer protection in e-commerce transactions.

In 2021, data produced by the Ministry of Trade of the Republic of Indonesia shows that there are 9,393 consumer complaint services, of which 95.3% or 8,949 complaints are complaints in the e-commerce sector. Complaints in the e-commerce sector include complaints in the food and beverage sector, transportation services, refunds, purchases of goods that are not following the agreement, goods that are not received by consumers, unilateral cancellations, fraud, and the nonoptimal usage of the e-commerce applications.⁸

² Gregory E. Maggs. (2002). "Regulating Electronic Commerce." *The American Journal of Comparative Law* **50**: 665.

³ Bashar H. Malkawi. (2006). "E-Commerce in Light of International Trade Agreements: The WTO and the United States-Jordan Free Trade Agreement." *International Journal of Law and Information Technology* **15**(2): 155.

⁴ Yose Rizal Damuri, Adinova Fauri, and Dandy Rafitrandi. (2021) "E-Commerce Development and Regulation in Indonesia." *Centre for Strategic and International Studies Policy Brief*: 2.

⁵ Farizal F. Kamal. (1999). *Cyber Business*. Jakarta: Elex Media Komputindo, p. 81.

⁶ Indonesia, Law No. 8 of 1999 concerning Consumer Protection Act of 1999, Article 4.

⁷ Norbert Reich. (1992). "Protection of Consumers Economic Interest by the EC." *Sydney Law Review*: 25-42.

⁸ Press Release Kontan. (2021). *Kemendag Catat Pengaduan Konsumen 2021, E-Commerce Kembali Mendominasi*. Available online from: <https://pressrelease.kontan.co.id/release/kemendag-catat-pengaduan-konsumen-2021-e-commerce-kembali-mendominasi>. [Accessed February 15, 2022].

Based on the data and problems described by the author, therefore this article will discuss the legal certainty of consumer protection in e-commerce transactions in Indonesia and compare its applicability with the legal certainty of consumer protection in e-commerce transactions in India and the United States. The discussion in this article will be analyzed in a normative juridical manner with a prescriptive typology of research. This article will be organized into several sections. The first part is an introduction to explain the background regarding the topic in the article. The second part of this article will explain the overview of consumer protection laws in e-commerce transactions in Indonesia, India and the United States of America. The third part of this article will discuss a prescription on how the legal certainty of consumer protection in e-commerce transactions in Indonesia should be when viewed from a comparison of consumer protection laws in e-commerce transactions in India and the United States.

2. METHOD

The research method used in this article is juridical-normative, where the research emphasizes the use of written legal norms.⁹ The typology of the research is prescriptive research. This article aims to provide suggestions regarding the legal certainty of consumer protection in e-commerce transactions that should be implemented in Indonesia. The data used in this study is secondary data consisting of primary and secondary legal materials.¹⁰ These materials will then be analyzed descriptively, comparatively and qualitatively, to answer the problems studied.

3. RESULTS AND DISCUSSION

An Overview of Consumer Protection Law in E-Commerce Transactions in Indonesia, India and the United States

3.1. An Overview of Consumer Protection Law in E-Commerce Transactions in Indonesia

In Indonesia, there are at least five types of e-commerce. The first is listings or classified ads. This listing platform serves as a place where people can post their products for free, for example, Olx. The second is the online marketplace. Besides helping people to promote their products, the online marketplace also has an online money transaction system which allows all online transactions to be facilitated by the relevant marketplace application or website. An example of this type of e-commerce is Tokopedia. The third is shopping malls. Similar to online marketplaces, shopping malls tend to promote brands or sellers with well-known brands, for example Lazada. The fourth is an online store on social media. This kind of sale utilizes social media such as Facebook, Twitter, or Instagram to promote their products. The fifth is a crowd-sourcing and crowd funding website. This kind of website is used as an online fundraising site, for example kitabisa.com.¹¹

⁹ Sri Mamudji. (2005). *Metode Penelitian dan Penulisan Hukum*. Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia, p. 9-10.

¹⁰ Soerjono Soekanto. (1986). *Pengantar Penelitian Hukum*. Jakarta: Penerbit Universitas Indonesia, p. 10.

¹¹ Mahir Pradana. (2015). "Klasifikasi Bisnis E-Commerce di Indonesia." *Jurnal MODUS* 27(2): 171.

The laws and regulations governing consumer protection in e-commerce transactions in Indonesia are Government Regulation No. 80 of 2019 concerning Trade Through Electronic Systems ("**GR No. 80 of 2019**") and Government Regulation No. 71 of 2019 ("**GR No. 71 of 2019**") concerning the Implementation of Electronic Systems and Transactions. GR No. 80 of 2019 regulates electronic transactions that occur through cyberspace between business actors, consumers, individuals and government institutions¹². This Government Regulation requires business actors to provide correct, clear and honest information in conducting e-commerce transactions. The information must be accurate and true and honestly describes the condition, quality, price, and availability of the goods.¹³ If the consumer has any complaints, Article 18 GR No. 80 of 2019 provides the authority for consumers to submit complaints to the Ministry of Trade.¹⁴ This regulation also requires business actors to provide complaint services to consumers.¹⁵ Furthermore, Article 39 GR No. 80 of 2019 also requires e-commerce transactions to be initiated with honesty, fairness and balance between business actors and consumers.¹⁶

Other remaining obligations of the operator of the electronic transaction system or marketplace platform are regulated in GR No. 71 of 2019, to be precise in Article 14 which states that electronic system operators are obliged to implement the principle of personal data protection. The principle of protecting personal data is carried out by collecting personal data with the consent of the owner. Furthermore, the processing of personal data must be carried out according to its purpose, can be accounted for, and protect the security of personal data from loss or misuse.¹⁷

Meanwhile, the obligations of business actors in e-commerce transactions are regulated in Article 48 GR No. 71 of 2019, namely: (i) providing complete and correct information relating to contract terms, manufacturers and products offered; (ii) provide clear information about contract offers or advertisements; (iii) give the consumer and/or contract recipient a time limit to return the delivered goods and/or services provided if they are not following the contract or if there are hidden defects; (iv) gives information regarding the goods that have been delivered and/or the services provided; and (v) the business actors cannot require consumers to pay for goods sent and/or services provided without a contract basis.¹⁸

¹² Indonesia, Government Regulation No. 80 of 2019 concerning Trade Through Electronic Systems, Article 4 paragraph (2).

¹³ Indonesia, Government Regulation No. 80 of 2019 concerning Trade Through Electronic Systems, Article 13 paragraph (1) and (2).

¹⁴ Indonesia, Government Regulation No. 80 of 2019 concerning Trade Through Electronic Systems, Article 18.

¹⁵ Indonesia, Government Regulation No. 80 of 2019 concerning Trade Through Electronic Systems, Article 27.

¹⁶ Indonesia, Government Regulation No. 80 of 2019 concerning Trade Through Electronic Systems, Article 39.

¹⁷ Indonesia, Government Regulation No. 71 of 2019 regarding The Implementation of Electronic Systems and Transactions, Article 14 paragraph (1) and (2).

¹⁸ Indonesia, Government Regulation No. 71 of 2019 regarding The Implementation of Electronic Systems and Transactions, Article 48.

Other obligations of the business actors are also regulated in Article 65 paragraph (2) Law No. 7 of 2014 concerning Trade. This provision states that every business actor is prohibited from selling goods/services using an electronic system that is following the data or information provided. The data or information referred to, as regulated in Article 65 paragraph (4) of Law No. 7 of 2014 covers: (i) the identity and legality of business actors as producers or distributors; (ii) the technical requirements of the goods offered; (iii) technical requirements or qualifications for services offered (iv) price and payment methods for goods and/or services and (v) delivery method of the goods.¹⁹

3.2. An Overview of Consumer Protection Law in E-Commerce Transactions in India

In India, consumer protection law is regulated by the Consumer Protection Act of 2019. As for e-commerce transactions it is specifically regulated in the E-Commerce Rules of 2020. In Section 2 paragraph (16) of the Consumer Protection Act 2019 e-commerce is defined as buying or selling goods or services including digital products over a digital or electronic network.²⁰ Section 2 paragraph (17) of the Consumer Protection Act 2019 also states that the regulation also regulates marketplaces and online auction sites.²¹

One of the main differences between consumer protection laws in India and Indonesia is regarding consumer protection institutions. India recognizes the existence of the Central Consumer Protection Authority ("CCPA"), as it is regulated in Sections 10 to 27 of the Consumer Protection Act. The CCPA is an agency set by the Central Government of India to deal with matters that are crucial to the interests of consumers, such as unfair trade practices and misleading advertising. Moreover, the CCPA is also tasked with protecting and defending consumer rights.²² The CCPA consists of the Chief Commissioner, other commissioners appointed by the Central Government and investigative agencies.²³ The CCPA investigative agency is headed by a director general who oversees search and confiscations.²⁴

Same to GR No. 71 of 2019, the Consumer Protection Act of 2019 also has provisions regarding the protection of consumer data privacy. In Section 2 paragraph (47) point (ix), it is stated that what is considered an unfair business practice is when a business actor, seller, or service provider shares consumer personal information without the consumer's consent. Based on these provisions the Consumer Protection Act of 2019

¹⁹ Indonesia, Government Regulation No. 71 of 2019 regarding The Implementation of Electronic Systems and Transactions, Article 65.

²⁰ India, Consumer Protection Act of 2019, Section 2 paragraph (16).

²¹ Neelam Chawla and Basanta Kumar. (2021). "E-Commerce and Consumer Protection in India: The Emerging Trend." *Journal of Business Ethics*: 13.

²² India, Consumer Protection Act of 2019, Section 10 paragraph (1).

²³ India, Consumer Protection Act of 2019, Section 10 paragraph (2).

²⁴ India, Consumer Protection Act of 2019, Section 15 paragraph (1) and Section 22.

condemns the actions of business actors who spread consumer personal data without the consent of the consumer.²⁵

The provisions of the E-Commerce Rules of 2020 apply to (i) all goods and services purchased or sold through electronic networks including digital products; (ii) all e-commerce models, including marketplace and e-commerce inventory models; (iii) all retailers in e-commerce; (iv) all forms of unfair trade practices in all e-commerce models and (v) all e-commerce entities that offer goods or services in India but are not incorporated in India.²⁶ Article 4 of E-Commerce Rules of 2020 regulates the obligations of e-commerce entities, namely: (i) must be a business entity established under the Companies Act; (ii) comply with the E-Commerce Rules of 2020; (iii) established a complaint handling mechanism by appointing a complaint officer; (iv) if selling imported goods, the business entity shall mention the name and identity of the importer; (v) does not charge any cancellation fees to consumers; (vi) responding to all refund requests within a reasonable time frame and (v) does not manipulate prices to get profit.²⁷

Furthermore, Article 5 E-Commerce Rules of 2020 regulates the obligations of the marketplace in e-commerce transactions. The obligations include: (i) ensuring that the descriptions, images and other content of goods or services on their platform is accurate and corresponds directly with the appearance, nature, quality, purpose and other general features of such good service; (ii) provide the following information clearly to its users: (a) details about the sellers including their name, address and customer care number; (b) invoice number for each complaint submitted so that users can monitor the status of the complaint; (c) information about how to return the goods, how to do refunds, exchanges, guarantees, delivery, payment methods and dispute resolution mechanisms; (d) information about the available payment methods and (iii) retain relevant information to identify sellers who have repeatedly offered goods that violate the Copyright Act, Trademark Act and Information Technology Act in India.²⁸

The obligations of business actors in the marketplace are regulated in Article 6 E-Commerce Rules of 2020. In this provision, business actors are required to: (i) not adopt any unfair trade practices; (ii) not to present themselves as a consumer and post misrepresent reviews regarding any goods or services; (iii) not refuse the return of defective goods/services; (iv) have a prior written contract with an e-commerce entity to undertake a wrongful sale; (v) have a complaints officer to handle consumer complaints; (vi) ensure that the advertisements used to offer goods/services are

²⁵ India, Consumer Protection Act of 2019, Section 2 paragraph (47)(ix).

²⁶ Pratham Malhotra. (2021). "From Physical Markets to E-Commerce: Development of Consumer Rights in India." *Jus Corpus Law Journal* 1(4): 335.

²⁷ India, E-Commerce Rules of 2020, Section 4.

²⁸ India, E-Commerce Rules of 2020, Section 5.

following the actual characteristics of the goods/services; and (vii) provide the name, address, website and company contact details.²⁹

3.3. An Overview of Consumer Protection Law in E-Commerce Transactions in the United States

The Federal Trade Commission (“FTC”) is the main consumer protection institution in the United States. Section 5 of the FTC Act authorizes the FTC to oppose unfair trade practices. FTC also empowers the ability to issue investigative orders to investigate possible violations, make trade-related laws and regulations, and have the authority to file criminal lawsuits. In carrying out its mandate, the FTC Consumer Protection Bureau has several specialized divisions. These divisions include The Division of Advertising Practices, The Division of Financial Practices, The Division of Marketing Practices, The Division of Privacy and Identity Protection, The Division of Consumer Response and Operations, The Division of Consumer and Business Education, The Division of Litigation Technology and Analysis and The Division of Enforcement.³⁰

One of the main legislations in the United States that regulates e-commerce transactions is The Uniform Electronic Transactions Act of 1999 (“UETA”). This regulation discusses e-commerce in general and has a set of regulations governing e-commerce transactions. In Section 3 paragraph (a) of UETA, it is stated that this law applies to transactions relating to electronic records and signatures. Furthermore, in Section 5 paragraph (b), it is stated that this law only applies to transactions between parties who have agreed to conduct a transaction electronically. In addition, this law provides that electronic records, electronic signatures, and contracts made electronically will be considered valid as paper-based transactions.³¹

UETA also regulates electronic signatures. In Section 2 paragraph (8), an electronic signature is defined as “an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.”³² However, in Section 5 paragraph (a) it is emphasized that UETA does not require a record or signature to be made by electronic means or in electronic form. As stated in Section 5 paragraph (b), this law only applies to parties who are willing to conduct transactions electronically.³³ Section 7 paragraph (b) also ensures that the legal force of a record or signature cannot be denied just because it is in electronic form.³⁴

²⁹ India, E-Commerce Rules of 2020, Section 6.

³⁰ Spencer Weber Waller, et. al. (2011). “Consumer Protection in the United States: An Overview.” *European Journal of Consumer Law* 58(4): 3-7.

³¹ Patricia Brumfield Fry. (2001). “Introduction to the Uniform Electronic Transactions Act: Principles, Policies and Provisions.” *Idaho Law Review* 37(2): 252-255.

³² The United States of America, The Uniform Electronic Transaction Act of 1999, Section 2 paragraph (8).

³³ The United States of America, The Uniform Electronic Transaction Act of 1999, Section 5 paragraph (a) and (b).

³⁴ The United States of America, The Uniform Electronic Transaction Act of 1999, Section 7 paragraph (b).

In Section 8 paragraph (c) of UETA, it is stated that an electronic document may not be sent, communicated, or transmitted by a system that inhibits the ability to download the information in the electronic document.³⁵ Furthermore, in Section 11, it is stated that if the law requires a record or electronic signature to be notarized, that requirement can be fulfilled if the notary's electronic signature or electronic signature is attached with all the information that needs to be included.³⁶ This provision allows notaries to act electronically.³⁷

4. The Comparative Role of Consumer Protection Legal Certainty in E-Commerce Transactions in India and the United States in Improving the Quality of Consumer Protection Laws in E-Commerce Transactions in Indonesia

4.1. Comparison of Consumer Protection Legal Certainty in E-Commerce Transactions between Indonesia, India, and the United States

In this section the author will present a comparison of the legal certainty of consumer protection in e-commerce transactions in Indonesia with India and the United States. In this section the author will focus on several aspects of legal certainty, including (i) the legal validity of electronic evidence, (ii) the identity of the business actor, and (iii) the legal jurisdiction applicable to the e-commerce business entity.

In Section 13 of UETA, it is stated that at trial, evidence in the form of notes or signatures cannot be ruled out because the evidence is in electronic form.³⁸ When compared to Indonesia, the provisions regarding the recognition of electronic evidence have been included in Article 5 paragraph (1) Law No. 11 of 2008 concerning Information and Electronic Transactions, which states that "Electronic Information and/or Electronic Documents and/or their printed results are considered as legal evidence."³⁹ Meanwhile, in India, electronic evidence is recognized in Section 65B paragraph (1) of the Evidence Act, which states that any information contained in electronic records and stored on a computer is recognized as valid evidence without the need for further evidence.⁴⁰ Based on this comparison, it can be seen that Indonesia, India and the United States all have legal certainty regarding the recognition of records or electronic signatures as legal evidence in court.

The next difference lies in the obligation of business actors to include their identities. In Article 13 paragraph (1)(a) GR No. 80 of 2019, it is stated that "business actors are obliged to: (a) provide true, clear, and honest information about the identity of legal

³⁵ The United States of America, The Uniform Electronic Transaction Act of 1999, Section 8 paragraph (c).

³⁶ The United States of America, The Uniform Electronic Transaction Act of 1999, Section 11.

³⁷ Henry D. Gabriel. (2000). "The New United States Uniform Electronic Transactions Act: Substantive Provisions, Drafting History and Comparison to the UNCITRAL Model Law on Electronic Commerce." *Uniform Law Review* 5(4): 656.

³⁸ The United States of America, The Uniform Electronic Transaction Act of 1999, Section 13.

³⁹ Indonesia, Law No. 11 of 2008 concerning Information and Electronic Transactions, Article 5 paragraph (1).

⁴⁰ India, Information Technology Act of 2000, Section 92 (Amendments to the Indian Evidence Act 1872).

subjects supported by valid data or documents.”⁴¹ In India, the obligations of business actors in electronic transactions are regulated in Article 6 paragraph (4) E-Commerce Rules of 2020 which states that business actors in the marketplace must ensure that: (i) they have a contract with an e-commerce entity to be able to sell goods/services; (ii) it has appointed a consumer complaints officer who can receive consumer complaints within 48 hours and resolve them within one month; (iii) ensure that the advertisements for the goods/services it sells are consistent with the actual quality of the goods/services and (iv) provide the e-commerce entity's name, geographic address and contact details.⁴² While in the United States, business actors are not required to include their identities. The obligations of employers in the United States are set out in Section 45(a) paragraph (2) of the U.S. Code Title 15 which states that business actors are prohibited from using unfair competitive methods or practices in trading.⁴³ Based on these provisions, the obligation of business actors to include their identities is only owned by the laws and regulations concerning consumer protection in Indonesia and India.

The next difference lies in the provisions regarding the agreement of the parties to carry out transactions electronically, which are contained in Section 5(b) of UETA. This provision emphasizes that The Uniform Electronic Transactions Act of 1999 only applies to parties who have agreed to transact electronically.⁴⁴ In Indonesia, such provisions can be found in Article 39 paragraph (2) of GR No. 80 of 2019. However, this provision is not found in the Consumer Protection Act 2019 nor the E-Commerce Rules 2020 as a consumer protection law and electronic transactions that apply in India.

With the provision of Section 5(b) of UETA which requires the consent of the parties to transact electronically, these laws and regulations will not recognize an electronic transaction where one of the parties does not have an electronic device or computer to receive notifications. In addition, this statutory regulation also does not allow business actors to force consumers to transact electronically by including hidden statements in the form of contracts.⁴⁵ Thus, this provision has protected the rights of consumers as e-commerce users based on the UN Guidelines for Consumer Protection.

The final difference is regarding the legal jurisdiction that applies to e-commerce business entities. In Article 17 paragraph (2) of GR No. 80 of 2019, it is clearly stated that “domestic electronic trade entities and/or foreign electronic trade entities that transact with consumers must comply with the provisions of the laws and regulations

⁴¹ Indonesia, Government Regulation No. 80 of 2019 concerning Trade Through Electronic Systems, Article 13 paragraph (1).

⁴² India, E-Commerce Rules of 2020, Section 6 paragraph (4).

⁴³ The United States of America, U.S. Code Title 15 - Commerce and Trade, Section 45(a) paragraph (2).

⁴⁴ The United States of America, The Uniform Electronic Transaction Act of 1999, Section 5 paragraph (b).

⁴⁵ Shea C. Meehan. (2000). “Consumer Protection Law and the Uniform Electronic Transactions Act (UETA): Why States Should Adopt UETA as Drafted.” *Idaho Law Review* 36(3): 571-572.

in Indonesia.”⁴⁶ Based on these provisions, electronic trade entities in Indonesia are subject to the laws and regulations in Indonesia. While in India, Article 4 paragraph (1) letter (a) E-Commerce Rules of 2020 states that an e-commerce entity must be a business entity that is subject to the Companies Act 1956 or Companies Act 2013 or a foreign business entity that meets the provisions of Section 2 clause (42) Companies Act 2013, or an office, branch, or agency outside India subject to a person residing in India.⁴⁷ Based on these provisions, an e-commerce business entity must comply with the laws and regulations regarding business entities in India.

Meanwhile, the United States does not yet have specific provisions governing the jurisdiction of e-commerce business entities. To deal with this, the United States used the precedent of *Zippo Manufacturing v. Zippo Dot Com* which occurred in 1997. *Zippo Manufacturing* is a corporation founded in Pennsylvania, while *Zippo Dot Com* is a business entity that was founded in California but conducts most of its commercial activities selling lighters through websites on the internet. *Zippo Manufacturing* as the plaintiff stated that *Zippo Dot Com* had violated the Federal Trademark Act, but *Zippo Dot Com* as the defendant excluded the lawsuit from *Zippo Manufacturing* because there was a lack of personal jurisdiction in this case. The court ultimately ruled that *Zippo Dot Com* was subject to the jurisdiction of Pennsylvania because it was evident that the company had conducted business transactions with residents of Pennsylvania.⁴⁸

This precedent introduces an approach to determine the jurisdiction of an e-commerce entity, namely by analysing how often commercial activities are carried out by an e-commerce entity on the internet. If the commercial activity on the internet from an e-commerce entity is classified as active, then personal jurisdiction can be applied.⁴⁹ Broadly speaking, personal jurisdiction aims to protect the defendant from the difficulty of defending a lawsuit in a remote and inconvenient place.⁵⁰

Based on the comparison of the three countries it is concluded that the legal jurisdiction that applies to e-commerce business entities in Indonesia is Indonesian laws and regulations based on Article 17 paragraph (2) of GR No. 80 of 2019. Meanwhile, the legal jurisdiction that applies to e-commerce business entities in India is the laws of India based on Article 4 paragraph (1)(a) of E-Commerce Rules of 2020. As for the United States, the jurisdiction applied to an e-commerce entity is a personal jurisdiction that is reviewed based on how often commercial activities are carried out by the e-commerce entity on the internet.

⁴⁶ Indonesia, Government Regulation No. 80 of 2019 concerning Trade Through Electronic Systems, Article 17 paragraph (2).

⁴⁷ India, E-Commerce Rules of 2020, Section 4 paragraph (1)(a).

⁴⁸ Jayci Noble. (2018). “Personal Jurisdiction and the Internet: A Shift in the International Shoe Analysis for Users of E-Commerce and Peer-to-Peer Websites.” *Southern Illinois University Law Journal* 42: 530-531.

⁴⁹ Faye Fangfei Wang. (2008). “Obstacles and Solutions to Internet Jurisdiction: A Comparative Analysis of the EU and US.” *Journal of International Commercial Law and Technology* 3(4): 239.

⁵⁰ Jayci Noble. (2018). “Personal Jurisdiction and the Internet: A Shift in the International Shoe Analysis for Users of E-Commerce and Peer-to-Peer Websites.” *Southern Illinois University Law Journal* 42: 525.

4.2. The Comparative Role of Consumer Protection Legal Certainty in E-Commerce Transactions in India in Improving the Quality of Consumer Protection Laws in E-Commerce Transactions in Indonesia

In Article 4 paragraph (3) of the E-Commerce Rules of 2020, it is stated that no e-commerce entity shall adopt any unfair trade practice, whether in the course of business on its platform or otherwise.⁵¹ Provisions regarding unfair trade practices should also be regulated in the law related to e-commerce transactions in Indonesia. This is necessary to protect consumers from unfair trade practices and to realize safe e-commerce transactions for consumers.

In Article 4 paragraph (11) of the E-Commerce Rules of 2020, it is regulated regarding the prohibition for business actors to manipulate the prices on e-commerce platforms in India. The provision states that no e-commerce entity is allowed to: (a) manipulate the price of goods or services offered on its platform to gain unreasonable profit; and (b) discriminate between consumers which may affect their rights.⁵² Provisions regarding the prohibition to manipulate the prices on e-commerce platforms as stated in Article 4 paragraph (11) of E-Commerce Rules of 2020 should also be included in the law governing e-commerce transactions in Indonesia. This is because such provisions can protect consumers from one type of unfair trade practice, namely price manipulation by sellers.

Article 5 paragraph (5) of E-Commerce Rules of 2020 stipulates provisions regarding the obligation of the marketplace to identify sellers who have violated the Law on Trademarks and/or Copyrights in India.⁵³ Such provisions are not found in GR No. 80 of 2019, for this reason, the laws and regulations governing e-commerce legal certainty in Indonesia should include provisions regarding the obligations of electronic trade entities to identify sellers who have violated the Law on Marks and/or Copyrights. By including provisions like this, business actors will tend to be more careful in marketing their products or services and are more concerned with ensuring whether the product advertisements are in accordance with the provisions of the applicable laws and regulations.

Article 5 paragraph (3) of the E-Commerce Rules of 2020 requires the marketplace to display several information on its website. The first information is the seller's identity, namely their business names, addresses, customer care phone numbers, feedback from consumers, and other necessary information so that consumers can make good decisions before the transaction. The second information that must be presented is the ticket number for filing a complaint that consumers can use to track the status of the complaint. The third information that must be presented is information regarding refunds, guarantees, shipping, payment methods, and the mechanism for filing complaints and compensation. The fourth information that must be provided by the marketplace is information regarding the payment method, the security of the payment method, additional fees to be paid, payment cancellation procedures, as well as the contact of the payment service provider. The fifth information that must be provided by the marketplace is the ranking of the goods or services being sold as well as an

⁵¹ India, E-Commerce Rules of 2020, Section 4 paragraph (3).

⁵² India, E-Commerce Rules of 2020, Section 4 paragraph (11).

⁵³ India, E-Commerce Rules of 2020, Section 5 paragraph (5).

explanation of the parameters that determine the ranking of the goods or services in easy-to-understand language.⁵⁴

With these provisions, E-Commerce Rules of 2020 has detailed what information the marketplace must provide on its website, especially information such as the seller's contact details, payment methods, complaint submission mechanisms, and payment service provider contacts. Among the five mandatory information contained in Article 5 paragraph (3) of the E-Commerce Rules of 2020, only one information whose obligations are regulated by GR No. 80 of 2019 is information regarding complaint services in Article 27 paragraphs (1) and (2) of GR No. 80 of 2019. Article 27 paragraph (1) states that "Business actors are obliged to provide complaint services for Consumers." Then in paragraph (2), it is stated that "Complaint services as referred to in paragraph (1) at least include: a. the address and contact number of the complaint; b. Consumer complaints procedures; c. complaint follow-up mechanism; d. officers who are competent in processing complaint services; and e. complaint settlement period."⁵⁵ The obligation of the marketplace to provide information regarding seller contact details, refund and guarantee mechanisms, and contact details of payment service providers should also be included in GR No. 80 of 2019 as a statutory regulation that provides legal certainty for e-commerce transactions in Indonesia. This is intended to help consumers make a well-integrated choice.

4.2. The Comparative Role of Consumer Protection Legal Certainty in E-Commerce Transactions in the United States in Improving the Quality of Consumer Protection Laws in E-Commerce Transactions in Indonesia

In Section 8 letter (c) UETA, it is stated that an electronic document may not be sent, communicated, or transmitted by a system that inhibits the ability to print or download the information in the electronic document.⁵⁶ Such provisions should also be contained in GR No. 80 of 2019 and/or GR No. 71 of 2019 as the legal basis for e-commerce transactions in Indonesia. This is necessary to provide consumers with convenience in exchanging information when transacting in e-commerce to minimize the opportunity for miscommunication between business actors and consumers.

In Section 11 of the UETA, it is stated that if the law requires a record or electronic signature to be notarized, that requirement can be fulfilled if the notary's electronic signature is attached with all the information that needs to be included.⁵⁷ This allows notaries to act electronically.⁵⁸ Such provisions should be contained in GR No. 80 of 2019 and/or GR No. 71 of 2019 as the legal basis for electronic transactions in Indonesia. This will give the notary flexibility to use electronic signatures if transactions between consumers and business actors require the role of a notary.

⁵⁴ India, E-Commerce Rules of 2020, Section 5 paragraph (3)(a), (b), (c), (d), and (e).

⁵⁵ Indonesia, Government Regulation No. 80 of 2019 concerning Trade Through Electronic Systems, Article 27 paragraph (1) and (2).

⁵⁶ The United States of America, The Uniform Electronic Transaction Act of 1999, Section 8 paragraph (c).

⁵⁷ The United States of America, The Uniform Electronic Transaction Act of 1999, Section 11.

⁵⁸ Henry D. Gabriel. (2000). "The New United States Uniform Electronic Transactions Act: Substantive Provisions, Drafting History and Comparison to the UNCITRAL Model Law on Electronic Commerce." *Uniform Law Review* 5(4): 656.

Section 12 paragraph (a) of UETA states that if the law requires a record to be retained, that requirement must be met by: (i) accurately reflects the information contained in the record; and (ii) such stored records remain accessible in the future.⁵⁹ Provisions related to the storage of an electronic record like this should be regulated in GR No. 80 of 2019 and/or GR No. 71 of 2019 as the legal basis for electronic transactions in Indonesia. This will help business actors or consumers who transact in e-commerce to keep access to records related to electronic transactions that have been made for future purposes.

Section 15 of the UETA regulates the time and place of sending and receiving electronic records. In Section 15 paragraph (a), it is stated that an electronic record is deemed to have been sent when: (i) it has been properly addressed to the information processing system used by the recipient to receive electronic information; (ii) the electronic records in question are in a form that can be processed by the system; and (iii) the electronic record has entered a data processing system which is beyond the control of the sender.⁶⁰

In Section 15 paragraph (b), it is stated that an electronic record is deemed to have been received when: (i) the electronic record has entered the information processing system used by the recipient; and (ii) the electronic record is in a form that can be processed by the information receiving system used by the recipient.⁶¹ An explanation of the time and place of sending and receiving an electronic record is essential in an e-commerce transaction between the consumer as the sender and the business actor as the recipient, or vice versa. For this reason, such provisions should also be regulated in GR No. 80 of 2019 and/or GR No. 71 of 2019 as the laws and regulations governing e-commerce transactions in Indonesia.

5. An Overview on How the Legal Certainty of Consumer Protection in E-Commerce Transactions Should Be Implemented in Indonesia

One of the things that discourage consumers from transacting through e-commerce is the fear of their credit and debit card information being misused. Based on a 2002 study conducted by the British Consumers Association, only 23% of internet users in the UK trust the safety of using a credit card when shopping online. Almost half of the internet users in the UK (around 51%) do not trust internet security, which can threaten the existence of businesses that trade via the internet. Furthermore, when e-commerce users in Germany are asked about the security features they need, secure payment processing is at the top of the list. More than 94% of those interviewed stated that a secure payment method is very important. The second is the need for a money-back

⁵⁹ The United States of America, The Uniform Electronic Transaction Act of 1999, Section 12 paragraph (a).

⁶⁰ The United States of America, The Uniform Electronic Transaction Act of 1999, Section 15 paragraph (a).

⁶¹ The United States of America, The Uniform Electronic Transaction Act of 1999, Section 12 paragraph (b).

guarantee if an error occurs during the transaction process.⁶² Given this issue, consumer protection laws in Indonesia should provide security guarantees for consumers to transact using credit cards in e-commerce without having to fear that their credit or debit card information will be misused. In addition, consumer protection laws in Indonesia should also regulate money-back guarantees if consumers make mistakes when transacting on e-commerce platforms. This will increase consumer confidence when shopping online because their right to safety is guaranteed by law.

Furthermore, consumer protection laws in Indonesia should also support the existence of Online Dispute Resolution (“ODR”) as an option for dispute resolution in e-commerce transactions. ODR is a dispute resolution option that utilizes the internet and other computer-based technologies to facilitate alternative dispute resolution. For example, disputing parties may use the internet to communicate with each other as part of a conciliation process or a mediator may communicate with both parties via the internet as part of a mediation process. With ODR, this alternative form of dispute resolution can meet consumer needs for dispute resolution options that do not depend on the jurisdiction of a country.⁶³ The existence of ODR will also support the fulfilment of consumer rights to the availability of consumer dispute resolution institutions and compensation in e-commerce transactions, as contained in the UN Guidelines for Consumer Protection.

The Indonesian government should also provide consumers with education on issues related to e-commerce activities. For example, how to protect yourself from fraud on the internet, what are the rights of consumers in e-commerce transactions, and how to protect personal data online. Governments in other countries such as Canada for example have developed websites that contain various information on consumer protection on the internet (<https://www.consumerhandbook.ca/>). By educating consumers, governments can help consumers protect themselves and equip consumers to transact securely on the internet.⁶⁴

4. CONCLUSION

Based on the descriptions in the previous chapters, the authors hereby state the following conclusions: (1) The legislations related to the consumer protection of e-commerce transactions in Indonesia are namely Law No. 8 of 1999 concerning Consumer Protection, GR No. 80 of 2019 concerning Trade Through Electronic Systems, and GR No. 71 of 2019 concerning the Implementation of Electronic Systems and Transactions. (2) There are several main comparisons that distinguish the legal

⁶² Wolfgang Wopperer. (2002). “Fraud Risks in E-commerce Transactions.” *The Geneva Papers on Risk and Insurance Issues and Practice* 27(3): 384-385.

⁶³ American Bar Association's Task Force on Electronic Commerce and Alternative Dispute Resolution in Cooperation with the Shidler Center for Law, Commerce and Technology, University of Washington School of Law. (2002). “Addressing Disputes in Electronic Commerce: Final Recommendations and Report.” *The Business Lawyer* 58(1): 434.

⁶⁴ Theresa E. Miedema. (2018). “Consumer Protection in Cyber Space and the Ethics of Stewardship.” *Journal of Consumer Policy* 41: 61.

certainty of consumer protection in e-commerce transactions between Indonesia, India, and the United States. The first is regarding the institutions that support the enforcement of consumer protection. Indonesia only recognizes three institutions, namely the *Badan Perlindungan Konsumen Nasional*, *Lembaga Perlindungan Konsumen Swadaya Masyarakat*, and *Badan Penyelesaian Sengketa Konsumen*. Unlike the FTC Consumer Protection Bureau in the United States which has special divisions under it. While in India, the institutions that function to enforce consumer protection are the Central Consumer Protection Authority and the Central, District, and State Consumer Protection Council. The second difference is regarding the obligation of business actors to include their identity. In Indonesia, this provision is stated in Article 13 paragraph (1) letter (a) of GR No. 80 of 2019. In India, this provision is contained in Article 6 paragraph (4) of the E-Commerce Rules of 2020. Meanwhile, the United States does not have such a provision. The third difference is regarding the legal jurisdiction of e-commerce business entities. In Indonesia, Article 17 paragraph (2) of GR No. 80 of 2019 stipulates that both domestic and foreign electronic trade entities are subject to Indonesian laws and regulations. In India, Article 4 paragraph (1)(a) of E-Commerce Rules of 2020 states that an entity in e-commerce in India must be a business entity that is subject to the laws and regulations regarding limited liability companies in India. While in the United States, the jurisdiction of an e-commerce business entity is determined based on how often commercial activities are carried out by the e-commerce entity on the internet. If the business entity is active enough in conducting transactions on the internet, then personal jurisdiction can be applied. (3) The consumer protection law in Indonesia should support the existence of Online Dispute Resolution to further facilitate the dispute resolution process between consumers and business actors in e-commerce transactions. The consumer protection law in Indonesia should also regulate the obligation of the marketplace to include provisions regarding refunds or guarantees. Furthermore, the consumer protection law in Indonesia should also provide security guarantees for consumers in transacting using credit cards and electronic money.

Hereby are the suggestions that can be given by the authors: (1) Law No. 8 of 1999 concerning Consumer Protection as the legal basis for consumer protection in Indonesia should be revised to be in line with the development of technology and information. This law should be updated by adding provisions that support consumer protection in e-commerce transactions. (2) The Government of Indonesia should provide consumers with education related to issues in e-commerce transactions such as what are the rights and obligations of consumers in e-commerce transactions and how to protect our own personal data when shopping on the internet. (3) Consumers should be more selective and careful when shopping in e-commerce by making sure they have read the terms and conditions in the online marketplace to understand their rights and obligations.

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