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## THE ELECTRONIC MARKET (MARKETPLACE) ON ELECTRONIC TRADE (E-COMMERCE) IN INDONESIA

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### Abstract

This research is motivated by the importance of the role of the marketplace as a place for electronic commerce transaction activities between sellers and buyers that can prevent losses and provide a sense of security for both sellers and buyers. Given the importance of the role of the marketplace, it becomes a problem when questions arise regarding the legal position of the electronic market (marketplace) in electronic commerce (e-commerce) in Indonesia. Therefore, this study aims to find out the position (status or standing) electronic market law (marketplace) on trade electronics (e-commerce) in Indonesia. This study uses normative legal research with a statute legal approach and a conceptual approach. This study results of this study showed that the legal position of the marketplace in electronic commerce (e-commerce) in Indonesia includes 2 (two) things, namely the legal position as a platform and the legal position as a guarantor.

**Keywords:** e-commerce; marketplace; trade

### 1. INTRODUCTION

Development of technology information is progresses very rapidly that make an impact to public's life in various field, one of that field is economic or trade field. That's because technology offer various convenience, fast, practical, effective, and efficient, especially in transaction processing or business within internet as media to communicate, collaborate and work together between company or individual (Sayekti, 2018). Internet usage for trading activity or in business known with term electronic trading or Electronic Commerce (hereinafter referred to as e-commerce) (Maulana, Susilo, & Riyadi, 2015).

E-commerce is activity distribute, buy, sell, market goods and services through system electronics, with how to transfer funds electronically (Suyanto, 2003). E-commerce is also interpreted as the process of buying, selling or exchange products, services and information through network computer, where e-commerce is part from e-business, with more coverage, not only just commerce but also includes

collaboration partner business, service customers, vacancies work, and other activities (Wibowo, 2014).

In relation with explanation above, that's important to know that application of e-commerce starts at the beginning the 1970s, namely with appearance innovation sort of Electronic Fund Transfer (hereinafter referred to as EFT) or electronic money that used for finance transaction. At that time, he EFT app still limited to big company and finance institution (Samad, 2019). Application for transaction finance next experience development with existence Electronic Data Interchange (EDI), which is evolving from transaction finance to processing other transactions and enlarge companies involved as well as, institutions finance, manufacturing company, retail, service, and so on (Samad, 2019). Even more with internet service getting more advance in beginning of 1990s, which gave very big influence for system known world economy with draft digital economy, where concept of digital economy was first introduced by Tapscott in 1995 is a phenomenon of social influence system

economy, where phenomenon the have characteristics as a room intelligence, including information, various access to instrument information, capacity information and processing information (Sayekti, 2018).

Based on information above, in Indonesia emergence of e-commerce began with presence of IndoNet in 1994 as the first Commercial Internet Service Provider (ISP) / the first Internet Service Provider (ISP) for commercial purpose. At that time, government still not knowing yet about gap in internet business and only few internet users (Sanjaya, 2015). The presence of IndoNet become a stepping stone for the use of telecommunications technology in all fields, including trade, where the traders or businessman could use the internet as stall for showing or promote product their products.

The development of e-commerce from year to year showing great development. That was marked with appearance of Kaskus, then followed by emergence of Bhinneka.com in 1999. Even when look at big numbers of e-commerce users were getting a lot and to protect parties involved in e-commerce. In 2001 government drafted a Law about e-commerce (<https://pospapua.com/dari-indonet-ke-startup-unicorn-yang-online-online-itu-2/> , accessed on 21 December 2021).

In relation with explanation as described above, the development of e-commerce increasingly one of which is because a lot the facilities offered and of course that gave beneficial for society. Benefit of e-commerce as intended before including: 1) as shape efficiency for company. In marketing aspect, energy, time, and operational cost; 2) Can reach consumers (customers) directly from nor international scope (Achjari, 2000). This is because business carried out no look country border with existence digital technology, apart from that, company can open a virtual shop up to 24 hours with showing information about products and procedures purchase online on the internet; 3) Speed up time processing and reducing risk of human error; 4) Reduce use paper in various activity start from designing to marketing; 5) Allow company realize highly specialized business (Wibowo, 2014).

Regarding with explanation on the above, besides gave impactful benefits and advantages in society, e-commerce also

has weakness in implementation, including: 1) the existence of possibility information data theft consumer including financial data, which results in loss big for consumers; 2) Usage access to sources by parties who do not have right, for example hackers who can hack program and break into a system banking then move amount other people's accounts to another account; 3) Incompatibility product or goods arrived (accepted by consumer ) with ordered goods; 4) Existence disabled product or goods received by consumers; 5) Loss that is not unexpected, where case that caused by the disturbance done with intentional, dishonesty, practice business that doesn't right, error factor man or system (Wibowo, 2014). Five things above, will harmful party consumer (e-commerce), including businessman or trader if errors caused not the traders fault, because trader will lose trust from consumer. In relation with that, for prevent happening things or impact negative e-commerce as described above, then consumer could use form of a trusted and reliable e-commerce market to ensure security for the parties involved in transaction e-commerce, one of namely the electronic market or known as marketplaces.

Marketplace is online media internet based (web-based) place doing business activity and transactions between buyers and sellers. Buyer could looking for as many suppliers possible with desired criteria, so that get in accordance market price (Apriadi & Saputra, 2017). Another definition of marketplace is also interpreted as receptacle community business interactive by electronics that provide a market where company could take share in activity trading or business other (Apriadi & Saputra, 2017). Regarding with type marketplace moment this already has growing could use by all people in the world, such as Amazon, eBay, Shopify, Volusion, and others, while in Indonesia, there also several marketplaces that can accessed including Shopee, Lazada, Tokopedia, Bukalapak, and so on.

Related with the explanation above, it is understood that marketplace means the place or the "vessel" that becomes bridge for interact for seller who sells product with consumer as needy party that needs products or items to be buy merchandise from seller. There is a marketplace will help the parties in communicate and achieve their respective goals and prevent happening possible loss felt by the

customer. Is it like as experienced by marketplace customer named Danis Darusman who bought iPhone 6 Plus at the seller or merchant at one marketplace in Indonesia, however when package arrived and he opened the box evidently Danis didn't accept the iPhone 6 Plus, but he got bar soap. Related to this, then the marketplace responsible for answer and succeed solved his problem (<https://www.liputan6.com/tekno/read/2264241/lazada-tuntaskan-case-beli-iphone-dapat-sabun>, accessed on 02 January 2022).

Based on case above, showing that with existence of marketplace, could prevent happening losses suffered by consumers, in addition to that, consumers will also feel safe when they do online shopping and don't need to worried about existence of crime or fraud inside e-commerce transaction.

A similar study conducted by Pratama (2020) on 'Legal Protection for Consumers for Goods Does Not Match The Picture in The Transaction on The Marketplace' revealed that consumers have the legal protection based on Consumer Protection Law, if the consumers obtain goods that do not match the picture and business actors in the marketplace are responsible for the mistakes. In addition, Santoso (2021) in her study about 'Legal Protection on E-Commerce Transactions: Problems and Challenges in Global Business', mentioned that in Indonesia itself there are already regulations that regulate the Act No. 8 of 1999 on consumer protection. This regulation is not only to protect consumers but also business actors. Although there are laws governing consumer protection, the government should create a system that can detect all E-Commerce business actors and collect them in one container identified, so if there is a violation of rights than the consumer, the business actor can be directly accountable for his actions. Similarly, consumers who must identify themselves to ensure the rights of business actors who transact with it.

Based on background described above, remembering marketplace has important role in e-commerce as described before, then there is the legal issue which become an interesting topic in this study. Thus, this study aims to find out the position (status or standing) electronic market law (marketplace) on trade electronics (e-commerce) in Indonesia.

## 2. METHOD

This research uses a type of normative legal research (doctrinal research), which is research that aims to provide a detailed and systematic explanation that is carried out by examining various legal rules, analyzing the relationship between one legal rule and another, even can also predict the development of legal rules in the future (Susanti & Efendi, 2014). Related to this, considering that this normative legal research analyzes legal rules, the objects studied are in the form of documents of statutory regulations and library materials (Susanti & Efendi, 2014). In this regard, the object of this research is in the form of rules or literature related to the marketplace in trading electronics (e-commerce) in Indonesia. The implementation of this research, this research uses a statute legal approach and a conceptual approach. The statute legal approach is carried out by examining laws and regulations (Susanti & Efendi, 2014). This statute legal approach is used to examine statutory regulations or regulations relating to position law marketplace inside trading electronics (e-commerce). About the conceptual approach, it is done based on legal principles obtained in the view of legal scholars or other legal doctrines by not departing from existing regulations this approach is necessary because no rules are governing it (Susanti & Efendi, 2014). The application of the conceptual approach about mechanism marketplace and trade electronics (e-commerce).

## 3. RESULT AND DISCUSSION

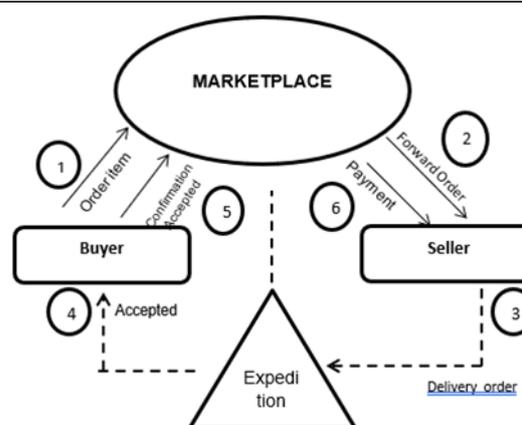
### Marketplace concept in Trading Electronics (e-Commerce)

Trading electronic or known with term e-commerce comes from Munir Fuady, Fuady said e-commerce becomes two meanings i.e. *first* in a narrow sense, e-commerce is something transaction sell buy on something product, services or information Among partner business with internet usage, based computer network, while *second*, in a broad sense, e-commerce, namely: covers action transaction online, including service customer, relationship trade with partner business, and internal transactions in a organization (Fuadi, 2008). Another definition e-commerce is also listed in Article 1 number 24 of the Law Number 7 of 2014 regarding the trade that calls it with term Trading through System Electronic is trade whose transactions done through series devices and

procedures electronics. Device electronic as intended as computers/PCs, laptops, and mobile phones that can used in management system electronic through various apps and platforms buy and sell online that until now gathers many interested entrepreneurs, one of them through marketplaces. Definition platform listed in Article 1 point 3 Regulation of the Minister of Finance Republic of Indonesia Number 210/PMK.010/2018 Regarding Treatment Tax on Transactions Trading Through System Electronics (E-Commerce), that Platform or Receptacle Electronic is receptacle in the form of applications, websites, and/ or service content other internet based used for transactions and/or facilitation trading through system electronics (e-commerce).

Marketplace or e-marketplace is a system information between organization where buyers and sellers in the market communicate information covers price, product and afford complete transaction through technology information and communication electronic namely the internet, where via the internet the sellers made easy for do promotion and marketing the product with more coverage, national nor global (Marco & Ningrum, 2017). Another definition of marketplace is also interpreted as receptacle community business interactive by electronics that provide a market where company or businessman could follow involved in B2B. B2B stands for from *Business to Business*, namely interaction trading with use internet network perpetrator business, namely buyer from product sold by seller no consumer end. However manufacturing or individual business where the product is purchased will processed again or for sale direct to consumer end (Rayport & Jaworski, 2004).

E-commerce and or e-business activities the other (Brunn et al., 2002). In relation with definition the marketplace, then for knowing role or position marketplace inside e-commerce, can see in the chart below.



**Figure 1**

E-marketplace Mekanism

Source: notes private, processed 2022

Chart above show that inside mechanism implementation e-marketplace, there are 6 (six) stages carried out namely: first, the buyer do booking desired item through marketplaces. Buyer can choose products based on price, rating, and so on, then determine total items to be ordered/purchased. Usually, several seller/merchants include description of the product so the buyer can look quality of the products; second, after determine total purchase and fill form electronic in accordance with provision marketplace, then buyer could do payment use method payments that have been provided by the marketplace, then marketplace will carry on order to seller; Third, after accept notification order, seller then send products through expedition, based on address stated destination by buyer. then seller input receipt delivery that they got from expedition so that seller nor buyer could do checking; Fourth, after the buyer received the package (product), then will appear notification reception from marketplaces; Fifth, buyers next confirm reception products to marketplace with enclose Mark or rating as well directed comments to seller; Sixth, after buyer succeed confirmation reception/confirmed they receive the product, then final step is marketplace continue payment to seller.

Based on the above explanation, if we look at the mechanism for implementing the marketplace in electronic transactions, then can found existence connection the law of the parties legal relation is connection among two or more legal subject, which consists of on bond among individual with individual, between individual with public or among one society with another society (Soeroso, 2006). Same definition before, Titik Triwulan Tutik put forward those legal relations are

relationships that occur in society, both relationships between subjects and legal subjects, as well as subjects and objects regulated by law, and cause legal consequences in the form of rights and obligations. Based on that definition, we know that there are 3 (three) elements of legal relations which include: 1) Legal subjects, namely people or parties whose rights/responsibilities are conflicting; 2) Objects to rights/obligations apply; 3) The relationship between the owner of the right and the bearer of the obligation to the object (Tutik, 2006).

This show that the legal relation on rights and obligations is embodiment existence connection given and guaranteed by law. In relation with this. it is necessary it is also known that legal relation shared into 2 (two) types. first, one-sided relation, there is only one party authorized to give something, do something or not, while the other party only has an obligation (see Article 1234 of the Civil Code) Second, two-sided legal relation, that is legal connection two between two parties, where accompany their rights and obligations of each party (Soeroso, 2006).

Based on the explanation above, it was found 3 (three) legal relationships in the marketplace on trade electronic (e-commerce), namely: 1) legal relation between marketplace and seller (seller); 2) legal relation between marketplace and buyers (buyers); 3) legal relation between buyers and sellers. Third legal relation the then bring up consequence law as it's called previously that is in the form of rights and obligations of the parties. This show that the marketplace legal relation in e-commerce activities including legal relation between two parties, because each side own rights and obligations, one of which marketplace as party that accommodates activity trading electronics (e-commerce). Regarding with that, to knowing rights and obligations marketplace, get known through legal status/ standing of marketplace. Related so, if we refer to the chart above, then could see position within marketplace trading electronics (e-commerce) consists of 2 (two), namely marketplace as a platform (container electronics) and marketplace as guarantor. In this regard, the following authors describe the legal position of the market in the explanation below.

### **Legal Position of Marketplace as a Platform**

In Indonesia, marketplace regulated by several law. Some of those regulations set by Law Number 19 of 2016 Regarding Changes to the Law Number 11 of 2008 concerning Information and Transactions Electronics (hereinafter referred to as UU ITE), Government Regulations Republic of Indonesia Number 71 of 2019 Regarding maintenance System and Transaction Electronics (hereinafter referred to as *PP PSTE*), and Regulation of the Minister of Finance Republic of Indonesia Number 210/PMK.010/2018 Regarding Treatment Taxation on Transaction Trading through System Electronics (e-Commerce) (hereinafter referred to as *Permenkeu PTPSE*). Based on some of the regulations above, it can be understood that the marketplace is divided into two meanings, implicit and explicit. Implicit definition of marketplace is contained in the ITE Law and *PP PSTE* which uses term match that is organizer system electronic is every person, state administrator, business entity (legal entity or non-legal entity) and the community that provides, manages, and/ or operate system electronics by individually nor together to user system electronics, for necessity for individual nor necessity another party. Related with that definition, Article 2 paragraph (2) of the Regulation Government Republic of Indonesia Number 71 of 2019 Regarding maintenance System and Transaction Electronics, it is explained that the organizer system electronic shared into 2 (two) types: 1) Operator electronic system with public scope that is maintenance system electronics carried out by the agency state administrator or institution appointed by the agency state administrators; 2) Organizer system electronic with private scope that is maintenance system electronically by a person, business entity, or society. Referring to both type electronic organizer system, then marketplace in type organizer system electronic with private scope, because organizer or owner marketplace is individual or business entity, not government agency. The definition of a marketplace is explicitly regulated in Article 1 point 4 *Permenkeu PTPSE* which explains that marketplace is means communication electronics used for doing transaction activity effort trading by electronics.

Based on explanation about marketplace above, marketplace is electronics trading activity (e-commerce) is the party providing receptacle or the place for do activity trading by electronic or

online with doing some things begin from preparation, collection, processing, delivery, distribution information by electronics and so on. It is also necessary to know that before *marketplace* operating or used, party *marketplace* must do registration more formerly to the Minister through service permission integrated effort by electronics. Registration as intended done as shape legality from government so that *marketplace* got protection law and get legal recognition law (see Article 6 PP PSTE).

Related so, it can be concluded that inner marketplace case this play a role as a platform namely party that accommodates activity trading between seller and buyer in the buying and selling transaction. Regarding with that, as a platform, there are several duties and authorities that must be carried out by marketplace that is create a portal, site, or application in network through the internet that used for: first, provide, manage, and/or operate offer and/or trading products and/or service.

Related to this, marketplace has available various service or business activities of goods and services, where every seller (store) in the marketplace is required to include the identity of the seller, product price and product description and so on marketplace will promote products that's fine through advertisements on social media, television, and electronic media other; (see Article 65 paragraphs (1) and (4) of the Law Republic of Indonesia Number 7 of 2014 Regarding Trade) Second, provide, manage, and/or operate service transaction finance. In transaction, marketplace provides various payment method (Article 3 paragraph (2) Permenkeu PTPSE) i.e ATM, e-banking, or payment through the pay marketplace facility, for example ShopeePay on one marketplace platform in Indonesia that from Shopee (<https://help.shopee.co.id/s/article/Apa-itu-ShopeePay> , accessed on 21 December 2021); Third, delivery of paid digital materials or content through the data network either by downloading through portals or websites, sending by electronic mail, or through other applications to the user's device; Fourth, provide, manage, and/or operate service communication covers, however no limited to messages short call voice, video call, mail electronics, and conversation in network in digital platform form, service networks and social media. regarding this, as intermediary, marketplace provides chat

facility that is inside application the marketplace to connecting sellers and buyers in order to communicate directly, for example to about ask stock products or product description (This thing as experience personal Author as buyer on one *marketplace platforms*); Fifth, search engine service, service provision Information electronics in the form of writing, sound, pictures, animation, music, videos, films, and games or combination from part and/ or entirely. Regarding with this, for support products, the marketplace also provides a search menu for products in the form of writing, symbols pictures, etc., use give convenience for buyer in look for product or desired item (Statement this based on experience personal Author as buyer, on one of the marketplace platform); and Sixth, managing personal data from seller nor buyer for necessity activity operations and transactions through electronic to give guarantee security for the parties, where function from authority marketplace this relate with position law next marketplace that is as guarantor.

### ***Legal Position of Marketplace as a Guarantor***

In relation with legal position/status of the marketplace as Guarantor, because marketplace is container, place, or means for sellers and buyer to conduct trade transaction, certainly marketplace has not quite enough answer in management so that activities effort or trading could walk with smoothly. This is according to the rules in Article 3 paragraph (1) PP PSTE and Article 15 paragraph (1) UU ITE which confirms same thing that:

"Every Organizer System Electronic should organize System Electronic by reliable and safe as well as responsible answer to operation System Electronic as should be."

Regarding with the provisions above, in the explanation of Article 15 paragraph (1) PP PSTE, it is explained that there are 3 (three) elements to measure responsibility marketplace as guarantor, i.e reliable, safety, and responsible answer to operation System Electronic. Related with the word "reliable" means as suitability ability system electronic with needs its use. On this marketplace platform, the system electronic as intended is application from that marketplace. Related so, if seen from usage, some application has own service or suitable facilities with needs its use. This is exemplified when

buyer order products, then buyer will directed go to the order menu, then fill out the form with a number of choices related total item ordered, description of item, method payment, type of expedition, up to service tracking products in the process of delivery through receipt sent by marketplaces. Related with the word "safe", has the meaning that system electronic should protected by physical and non-physical (see explanation Article 15 paragraph (1) PP PSTE) Related to this, some marketplace has system security alone including security in protect data or account party seller/merchant and buyer. (<https://shopee.co.id/docs/3612>, tokopedia through <https://www.tokopedia.com/help/browse/st-1030-keamanan-acun>, bukalapak with access <https://www.bukalapak.com/privacy>).

Regarding this security guarantee, in PP PSTE also mentions that organizer system electronics (in this case the marketplace) must give guarantee to -3 (three) points: first, availability agreement level service; second, availability agreement security information to service technology information used; and third, security information and facilities organized internal communication (see Article 11 PP PSTE).

In relation with the explanation above, in addition to guarantee on personal data security, the marketplace also provides guarantee safety to transaction finance. This is proved with existence service account party third (bank), for ensure security transaction, if the product has not been received by the buyer, then payment will not continue to seller, while money will deposit in third party account, but if transaction fail, then the money will be returned to buyer (Harahap, 2018).

Continue to the last element namely the word "responsible" answer to operation System Electronic as should be", has the meaning a legal subject who is legally responsible for the operation of the electronic system (see Article 15 paragraph (1) PP PSTE). Regarding to this, the legal subject as referred to in this case is the marketplace as the organizer of the electronic system. Related to this, however, it should also be understood that the responsibility is not entirely delegated to the marketplace party, because if the loss is due to an error, coercive circumstances, and/or negligence on the part of the seller or buyer, then the responsibility is no longer with the marketplace, but other legal subjects

(seller or buyer) who performs the act (see Article 15 paragraph (3) UU ITE, and Article 3 paragraph (3) PP PSTE).

#### 4. CONCLUSION

Based on the results explained above, it can be concluded that legal position/legal status of marketplace on electronics trade (e-commerce) in Indonesia is divided into 2 (two): 1) legal position of marketplace as a platform, with several duties and tasks include: first, providing the place or facilities, and manage activity trading products and/ or service, including promotion; second, provide, manage, and/ or operate financial transaction service in terms of providing payment method; third, delivery of paid digital materials or content through the data network either by downloading through portals or websites, sending by electronic mail, or through other applications to the user's device; fourth, the marketplace provides, manages, and/or operate service communication as chat facility that is inside application the marketplace to connecting sellers and buyers in order to communicate; fifth, the marketplace provides search engine, service provision information electronic good in the form of writing, symbols pictures, etc., use give convenience for buyer in look for product or desired item; and sixth, managing personal data of both sellers and buyers for the purposes of operational activities and transactions via electronic in order to provide security guarantees for the parties. 2) The legal position of the marketplace as a guarantor can be measured from 3 (three) elements, namely first, the marketplace guarantees that the application has services or facilities that are in accordance with the needs of its use; second, security includes guarantees for the security of personal data, and guarantees for financial transactions; third, being responsible, where the marketplace is responsible for the electronic transaction activities that are held, but it should also be understood that the responsibility is not entirely delegated to the marketplace party, because if the loss or error is caused by the seller or buyer, then the responsibility rests with the seller or buyer.

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