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Analysis of E-Commerce Regulations in Indonesia Towards Trans Pacific Partnership Provisions

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ABSTRACT

President Joko Widodo stated that Indonesia intended to join the Trans Pacific Partnership (TPP). In international treaties, when a country becomes part of international cooperation, the country is obliged to adjust its national law. The TPP consists of 30 Chapters, where the regulation regarding e-commerce is specified in Chapter 14. If Indonesia becomes part of the TPP, then the domestic e-commerce regulations must be adjusted according to the provisions that apply to the TPP. By employing the normative legal research method, this analysis aims to analyze laws and regulations related to e-commerce in Indonesia and e-commerce provisions in the TPP and identify the gaps between them. The results of the analysis show that if Indonesia joins the TPP, the Indonesian government needs to make adjustments to several regulations, such as Law Number 11 of 2008 as amended by Law Number 19 of 2016; Law Number 7 of 2014) of Law Number 11 of 2020; Government Regulation Number 71 of 2019; and Government Regulation Number 80 of 2019.

1. Introduction

As an open economy and the largest in Southeast Asia with a population of more than 270 million, President Joko Widodo expressed Indonesia's interest in joining the Trans Pacific Partnership (TPP) trade agreement. From an economic perspective, TPP is expected to be able to increase Indonesia's competitiveness in trade with countries across the region, encourage investment, and participate in global value chains that have an impact on quality and sustainable economic growth.^{1,2} However, vigilance is still needed in terms of the readiness of legal instruments that guarantee state sovereignty.

From a political perspective, Indonesia's joining the TPP is a strategy in the midst of the rivalry between the US and China in the Asian Region by adopting

1 M. Syadullah, Impact of the Trans Pacific Partnership to Indonesia, *International Journal of Economics and Financial Issues*, Vol.6 No.4, 2016

2 M. N. Latifah & A. A. Susanto, Analisis Kemungkinan Dampak Keterlibatan Indonesia dalam Trans Pacific Partnership (TPAGE) Terhadap Kinerja Perdagangan dan Daya Saing Ekspor, *Jurnal Ekonomi dan Studi Pembangunan*, Vol 17 No.1, 2016, page.55-70.

the return-maximizing option.³ In implementing the hedging strategy, on the one hand, Indonesia acts as a bandwagoner (supporter) by getting closer to the US through the TPP to maximize economic benefits, but on the other hand it is a soft balancing on the Chinese economy in the Asian Region.

Currently, the TPP consists of 12 countries that have joined the partnership, namely the United States (US), Japan, Brunei, Chile, New Zealand, Singapore, Australia, Canada, Malaysia, Mexico, Peru, and Vietnam.⁴ The involvement of these 12 countries represents 11% of the world's population with a total population of about 808.7 million people. In terms of Gross Domestic Product (GDP), the contribution of TPP member countries is estimated to reach a value of USD 27.8 trillion or around 37% of total GDP globally.⁵

In its implementation, the development of the TPP is very dynamic and tends to follow political developments in the US. Throughout 2015 to 2021, there are at least 3 (three) stages of TPP development, namely the stage of a small country as the initial initiator dominated by economic factors and development policies, the joining of the US which accelerated the TPP negotiations during the Obama administration, and the exit of the US from the TPP negotiation process due to political dynamics in the region during the Trump administration.⁶

In 2020, the US administration under President Joe Biden expressed interest in rejoining the TPP within the framework of the Comprehensive and Progressive Agreement for the Trans-Pacific Partnership (CPTPP). The use of the term CPTPP is intended as a US interest in accelerating the progress of negotiations since its withdrawal during the Trump administration.⁷

One of the important issues from the 30 Chapters that have been agreed upon in the TPP is online commerce (e-commerce) which is specifically regulated in Chapter 14. This sector is one of the economic issues in the future that will have an impact on several important aspects of the economy, such as copyright, cross-border trade, trade digitization, to data flow.⁸

In line with this, the e-commerce sector is an important concern for policy makers due to President Joko Widodo's directives regarding the Downstreaming of the Digital Economy in supporting the acceleration of the development of the digital sector. In the next few periods, e-commerce will still dominate Indonesia's digital economy activities with a total transaction value or Gross Merchandise Value (GMV) reaching USD 83 billion in 2025 compared to other

3 W. P. S. Cralita, Alasan Indonesia Menyatakan Minat Bergabung ke Trans-Pacific Partnership (TPAGE) Tahun 2015, *Jurnal Analisis Hubungan Internasional*, Vol.6 No.2, 2017, page.244-257.

4 I. M. Azmi & J. C. Phuoc, International Norms in Regulating E-Commerce: The Electronic Commerce Chapter of the Comprehensive Trans-Pacific Partnership Agreement, *International Journal of Business and Society*, Vol.21 No.1, 2020, page.66-80.

5 P. Dasgupta & K. Mukhopadhyay, The Impact of the TPAGE on Selected ASEAN Economies, *Journal of Economic Structures*, Vol.26 No.6, 2017, page. 1-34.

6 M. Cook, The TPAGE: Truths About Power Politics, ISEAS Working Paper No 2017-06, 2017, page.1-18.

7 H. Wangke, Prospek Hubungan Amerika Serikat dengan Indonesia dan Negara-Negara Indo Pasifik, *Info Singkat*, Vol.12 No.22, 2020, page. 7-12.

8 B. Sujadmiko, Trans-Pacific Partnership and Digital Copyright Infringement: Conflict Interest between Japan, USA, and Indonesia, *Jurnal Fiat Justisia*, Vol.11 No.1, 2017, page.87-98

sectors such as transportation, online travel, and online media. With this achievement, Indonesia will become the largest digital economy in Southeast Asia with a GMV value of USD 124 billion by 2025.⁹

During the Covid-19 pandemic era, the growth of the e-commerce sector has increased and has accelerated the growth of digital transactions in Indonesia. In 2020, the number of new digital consumers was recorded to grow by 50% and drive an increase in online demand up to 10 times compared to 2019, especially in the retail and wholesale sectors. This further indicates that Indonesia will have a "new normal" situation where e-commerce will become the main choice for the Indonesian people. From a legal perspective, further efforts should be made to harmonize this new culture with the prevailing regulations. Furthermore, legal instruments in Indonesia must be compatible with cross-border cooperation agreement.^{10,11}

The implementation of President Joko Widodo's directives regarding the Downstreaming of the Digital Economy needs to be followed up in an effective regulatory arrangement scheme. As one of the anticipatory efforts, regulations related to e-commerce as a potential sector in Indonesia's digital economy need to look at the provisions in the TPP. The TPP is a good medium in promoting a Regulatory Coherence approach for member countries to achieve a mutually beneficial cooperation agenda. In this regard, the compatibility between domestic regulations and international regulations, in this case the TPP, needs to be a joint consideration in policy alignment.^{12,13}

Various previous studies discussing TPP in relation to e-commerce are still relatively very limited and tend to analyze TPP in terms of projections and Indonesia's readiness to become a member of the TPP, or examine from one side of the regulation that is specific, including supervision of consumer protection and electronic transactions, related to business and transaction security, copyright issues between Indonesia, Japan, and the United States, as well as the influence of Indonesia's participation in the regulation of the railway sector. Therefore, this study wants to examine the issue of e-commerce which is specifically regulated in Chapter 14 of the TPP in a more comprehensive manner in relation to a number of aspects and provisions that apply in Indonesia, consisting of Law (UU) No. 11 of 2008 jo. Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE), Law Number 11 of 2020 concerning Job

9 Google, Temasek, Bain & Company, *E-Conomy South East Asia 2020 at Full Velocity: Resilient and Racing Ahead: Singapore*, 2020.

10 T. Safiranita, Aspek Hukum Transaksi Perdagangan Melalui Media Elektronik Dikaitkan dengan Undang-Undang Nomor 19 Tahun 2016 tentang Informasi dan Transaksi Elektronik, *Jurnal Dialogia Iuridica*, Vol.8 No.2, 2017

11 N. K. Wardani & A. Afriansyah, Indonesian Legal Challenges Regarding Electronic Contracts in International Trade, *Proceedings of the 3rd International Conference on Law and Governance*, Vol.130, 2020

12 T. J. Bollyky, *Regulatory Coherence in the Trans-Pacific Partnership Talks*. C.L. Lim, Deborah Elms, Patrick Low (eds.), *The Trans-Pacific Partnership: A Quest for a 21st Century Trade Agreement*, Cambridge University Press, Nov. 2012.

13 D. Ciuriak & N. Ciuriak, Regulatory Coherence and the Mega-Regional Trade Agreements: Lessons from the Trans-Pacific Partnership Agreement, *Canadian Business Law Journal*, Vol.58 No.3, 2016, page.325-340.

Creation (UU Job Creation), Government Regulation (PP) Number 71 of 2019 concerning System Implementation and Electronic Transactions (PP PSTE), as well as PP Number 80 of 2019 concerning Trading Through Electronic Systems (PP PMSE).

Based on this background, all provisions related to e-commerce currently in force in Indonesia need to be reviewed immediately for compliance with the provisions contained in the TPP. Thus, this study not only aims to examine the provisions regarding e-commerce in the laws and regulations in Indonesia and in the provisions of the TPP, but also to further analyze the gaps in the regulation of e-commerce in Indonesia against the provisions of the TPP.

2. Research Methods

This research is a normative legal study or a doctrinal legal study because the source of the data studied is secondary data in the form of legal materials, both primary, secondary and tertiary legal materials. The main ingredients are primary legal materials, namely legal materials that have binding legal force, in this case the provisions on e-commerce in Indonesian laws and regulations and the TPP. For Indonesian legislation, it is more specifically at the level of Law and PP. The provisions or rules and norms contained in Chapter 14 of the TPP are used as a reference to see whether they have been adequately accommodated in various Indonesian laws and regulations or not. If there is already a similar provision, then it will be further seen whether it has fully accommodated the norms mandated in the TPP provisions or not.

When viewed from the perspective of its objectives, this normative legal research is a study of the level of horizontal synchronization of law. What is examined is the extent to which Indonesia's national laws and regulations are in sync with the provisions of the TPP. This synchronization research is not only to obtain complete and comprehensive data on the legislation relevant to the provisions of the TPP, it can also reveal the weaknesses and strengths that exist in Indonesian legislation related to the material regulated in the TPP.

Since this study was conducted by reviewing regulations at the level of Law and Government Regulation, the approach used was the statute approach. In this case, the legal issues that are the object of study are e-commerce issues in relation to: 1) the principle of non-discrimination; 2) validity of documents and electronic signatures; 3) consumer protection; 4) protection of personal data; and 5) electronic contracts. The laws and regulations in Indonesia that will be reviewed are limited to: 1) UU ITE; 2) Employment Creation Law; 3) PP PSTE, and 4) PP PMSE.

3. Result and Discussion

3.1 Ketentuan mengenai *E-Commerce* dalam Peraturan Perundang-undangan di Indonesia dan *Chapter 14* TPP

The ITE Law basically provides general guidelines for regulating e-commerce in Indonesia based on the use of information technology for cross-territorial or universal information and electronic transactions. The use of the phrase 'harming the interests of Indonesia' contained in Article 2 of the ITE Law has a fairly broad scope, which includes but is not limited to harming the interests of

the national economy, citizens, and Indonesian legal entities. Therefore, the ITE Law has jurisdiction not only for legal acts that apply in Indonesia and/or carried out by Indonesian citizens, but also applies to legal acts committed outside the Indonesian jurisdiction (jurisdiction) as long as they have legal consequences in Indonesia.

Meanwhile, the formulation of e-commerce in the TPP aims to ensure that online media can be a safe and open alternative and can facilitate the transactions of goods and services in a more competitive and effective manner. Article 14.2.1 of the TPP states that the parties recognize the economic growth and opportunities provided by e-commerce and the importance of a framework that promotes consumer confidence in e-commerce and avoids barriers to its use and development. The provisions regarding e-commerce in Chapter 14 must be understood and implemented in conjunction with the provisions in other Chapters, for example Chapter 16 on Competition Policy and Chapter 28 on Dispute Settlement.

In general, the provisions of e-commerce in the TPP and regulations in Indonesia can be described as follows:

3.1.1 Non-Discriminatory Treatment of Digital Products (Article 14.4 TPP)

Similar to the basic principles recognized in the WTO (World Trade Organization), the TPP also regulates the prohibition of discriminatory treatment for digital products originating from other countries. Recognition of this principle can also be found in the provisions of Article 5 of PP PMSE which recognizes that in trading through the electronic system (PMSE) there are 2 (two) types of business actors: domestic and foreign.

However, Article 7 of PP PMSE stipulates that Foreign Business Actors who actively offer and/or conduct PMSE to consumers domiciled in the jurisdiction of the Unitary State of the Republic of Indonesia (NKRI) who meet the criteria in the form of number of transactions, transaction value, number of shipping packages ; and/or the number of traffic or accessors is deemed to fulfill a physical presence in Indonesia and conduct business activities permanently within the jurisdiction of the Unitary State of the Republic of Indonesia. Therefore, the business actor is obliged to appoint a representative domiciled in the jurisdiction of the Republic of Indonesia who can act as and on behalf of the business actor.

Furthermore, in Article 9 of PP PMSE it is stated that every PMSE that is cross-border must comply with the provisions of the laws and regulations governing exports or imports and the laws and regulations in the field of information and electronic transactions, including Law Number 7 of 2014 concerning Trade (UU No. Trade) and the ITE Law. In addition, domestic PPMSE and/or overseas PPMSE must prioritize using Indonesian high-level domain names (dot id) for electronic systems in the form of internet sites (Article 21).

In other provisions, Article 10 of the ITE Law stipulates that business actors involved in electronic transactions 'can' be certified by a reliability certification agency. The use of the word 'can' means that this certification is not mandatory

which implies that not all business actors will carry out the certification process. Apart from this, this certification must be carried out with the principle of equal treatment between foreign and domestic transactions for certain sectors so that it will not cause discrimination.

3.1.2 Validity of Electronic Documents and Electronic Signatures or Electronic Authentication and Electronic Signatures (Article 14.6 TPP)

Based on this provision, TPP member countries are required to recognize the validity of electronic documents and electronic signatures as valid evidence of an agreement between the parties, unless otherwise stipulated in the national regulations of the member country. This provision is in accordance with the ITE Law and PP PMSE regarding the same issue.

However, Article 60 paragraph (2) of PP PSTE regulates the separation of electronic signatures, namely certified and uncertified electronic signatures. To obtain a certified signature, the signature must be made using the services of an Indonesian electronic certification provider and using a certified electronic signature maker. The legal implications or consequences of using certified or uncertified electronic signatures affect the strength of proof. This can be one of the obstacles for business actors in carrying out electronic transactions in Indonesia. Moreover, the explanation of the article does not mention in detail the strength of the proof value of the two types of electronic signatures.

3.1.3 Consumer Protection or Online Consumer Protection (Article 14.7 TPP)

The provisions in the TPP generally regulate the importance of consumer protection in electronic transactions, where it is possible for cooperation between member countries to provide protection to consumers involved in electronic transactions. Another thing that is regulated is the need to adopt and implement the law regarding consumer protection.

In line with these provisions, Article 46 of the Job Creation Law which amends the provisions of Article 65 of Law Number 7 of 2014 concerning Trade (Trade Law), stipulates that if business actors in carrying out electronic transactions do not provide correct information, they will be subject to administrative sanctions. Business actors have the responsibility to provide complete and correct electronic data or information. This is related to the principle of good faith contained in Article 3 PP PMSE, where a violation of the principle or principle of good faith can cause the cancellation of the agreement between the parties, by not reducing or ignoring the rights of parties who have good faith in conducting PMSE.

In relation to consumer protection and national security, PP PMSE also mandates security clearance obligations from authorized agencies (Article 10). In addition, domestic PPMSE and/or overseas PPMSE that transact with consumers are required to comply with the provisions of laws and regulations in Indonesia, among others, must use an electronic system that has an electronic system eligibility certificate (Article 14 and Article 17). Not only that, Article 39

of PP PMSE also stipulates the minimum provisions that must be submitted by business actors when making an electronic offer.

Furthermore, in Article 64 of PP PMSE, business actors are given the obligation to ensure security, appropriate conditions, confidentiality, suitability, and timeliness of delivery of goods and/or services in accordance with transaction agreements through electronic systems. Therefore, business actors cannot burden consumers with the obligation to pay for goods sent without a contract basis.

3.1.4 Personal Data Protection or Personal Information Protection (Article 14.8 TPP)

Many studies show that the issue of personal data is one of the main concerns of consumers in electronic transactions.^{14,15,16,17} Therefore, it is not surprising that the TPP specifically emphasizes the need for the protection of personal data in electronic transactions so that it can guarantee the security of electronic transactions for its users. In line with these provisions, the regulation Article 25 PMSE requires domestic PPMSE and/or overseas PPMSE to store: 1) PMSE data and information related to financial transactions for a minimum period of 10 (ten) years since the data and information is obtained; and 2) PMSE data and information that are not related to financial transactions within a period of 5 (five) years since the data and information were obtained. The purpose of this time period is not only to provide protection for personal data, but also to guarantee legal certainty for every transaction made.

In line with this objective, the ITE Law also stipulates the obligation of business actors to seek approval from the data owner in the event that personal data concerning information about a person will be used through electronic media. In fact, business actors must also delete all managed personal data if the data owner asks to delete it in the case that the personal data owner declares to leave, unsubscribe or stop using PMSE services and facilities (Article 59 PP PMSE). The personal data protection standards take into account the existence of European data protection standards and/or APEC Privacy Frameworks. On this basis, anyone who feels that their rights have been violated regarding the misuse of personal data can file a lawsuit for the losses incurred (Article 26 of the ITE Law). Provisions regarding these protection rights still need to be better disseminated to the public so that consumers know that there is a right to request approval for the use of personal data and data deletion from business actors if they are no longer using PMSE services or facilities.

14 F. Bélanger & R. E. Crossler, Privacy in the Digital Age: A Review of Information Privacy Research in Information Systems, *MIS Quarterly*, Vol.35 No.4, 2011

15 R. P. Romasky & I. S. Noninska, *Challenges of the Digital Age for Privacy and Personal Data Protection*, Mathematical Biosciences and Engineering, Vol.17 Issue 5, 2020, page.5288-5303

16 D. K. Rath & A. Kumar, Information Privacy Concern at Individual, Group, Organization and Societal Level - A Literature Review, *Vilakshan - XIMB Journal of Management*, Vol.18 No.2, 2021

17 C. Wang, N. Zhang, & C. Wang, , Managing Privacy in the Digital Economy, *Fundamental Research*, Vol.1 Issue 5, 2021, page.543-551.

With this provision in the TPP, electronic contracts must be treated the same as contracts in physical form. This means that contracts in electronic or physical form have the same legal force. The ITE Law adheres to the same principle, where documents and electronic information are considered legal documents as long as the truth can be proven and accounted for. PMSE can use Electronic Contract mechanism or other contractual mechanism (Article 50 PP PMSE), where electronic contract can use electronic signature as a sign of agreement of the parties (Article 54 PP PMSE).

In particular, Article 47 paragraph (1) of PP PSTE states that electronic contract obligations addressed to Indonesian residents must be made in Indonesian. Thus, foreign business actors have additional duties if they want to bind themselves with Indonesian residents.

3.2 E-Commerce Principles in TPP and Regulations in Indonesia

Each regulatory content material must contain the principles or principles that underlie its formation and serve as guidelines for its formulators in determining the direction of the contents of the provisions to be regulated. Based on this, some basic principles in the provisions of the TPP and e-commerce regulations in Indonesia can be explained as follows.

3.2.1 Privacy Principle

Privacy or personal rights in the Elucidation of Article 26 of the ITE Law contains the meaning of the right to enjoy a private life and be free from all kinds of interference, such as spam or unwanted commercial electronic messages. In line with this, the provisions of the TPP also state that each member country controls unwanted commercial electronic messages (spCam). From these provisions, it can be seen that the issue of privacy does receive special attention not only in domestic regulations, but also in the provisions of the TPP. In fact, Article 14.8 of the TPP mandates that for a greater degree of certainty, a country may adopt or maintain measures such as comprehensive privacy measures, regulations for the protection of personal information or personal data, sector-specific regulations covering privacy, or regulations governing voluntary enforcement. company in relation to privacy. This means that the TPP recognizes the application of domestic rules related to privacy in each member country.

3.2.2 Esay Principle

As in the free trade agreements in general which aim to provide various facilities to achieve greater economic benefits, the TPP member countries have also agreed to provide ease of operation in the TPP market. In this case, companies located in TPP member countries are not required to build data storage centers or computing facilities. The rules in Article 21 PP PMSE only state the obligation to use server devices placed in the data center. Thus, the PP PMSE provisions also actually provide convenience by not limiting the location of computing facilities that can be owned by the company.

3.2.3 Cooperation Principle

In recognition of the global nature of electronic commerce, TPP member countries require cooperation among their members in supporting the smooth running of e-commerce activities. The cooperation includes: 1) assisting small and medium enterprises (SMEs); 2) exchange information and share experiences on regulation, policy, enforcement, and compliance related to electronic commerce; 3) exchange information and share views on consumer access to products and services offered online among member countries; and 4) cooperation in cyber security issues (Article 14.15 and Article 14.16). Not only in the provisions of the TPP, the principle of cooperation in electronic transactions is also regulated in the PP PMSE which states that domestic PPMSE and/or overseas PPMSE can cooperate in terms of: 1) administering payments through the electronic system; and 2) delivery of goods and/or services (Article 60 and Article 65).

3.2.4 Protection Principle

In law, consumers are considered to be in a weaker position than business actors because business actors know how to procure goods or services consumed by consumers and usually have better capital or economic strength than consumers. On this basis, consumer protection is one of the critical factors that must be guaranteed through various existing provisions, especially in electronic transactions where consumers cannot see or directly assess the goods or services to be purchased. In this regard, Article 14.7 of the TPP requires member countries to take necessary and effective steps to ensure transparency from business actors so as to prevent consumers from fraudulent practices or losses that may arise from electronic transactions.

This protection principle is also embraced by e-commerce regulations in Indonesia, where PP PMSE provides consumer protection by enforcing 'null and void' provisions on electronic contracts in the event of a technical error due to an unsafe, reliable and responsible electronic system (Article 57). . This null and void provision means that the parties are returned to all circumstances. In other words, agreements or engagements that occur between business actors and consumers are no longer valid or considered by law to never exist. Therefore, business actors must not take advantage and consumers must not be harmed by the cancellation.

3.2.5 Equal Treatment Principle

This principle can be found in various existing provisions, both in the TPP and e-commerce regulations in Indonesia. This same treatment does not only apply to the subject or the parties to the agreement, but also to the form of the agreement itself. For example, the provision on non-discriminatory treatment (Article 14.4 TPP) prohibits member countries from giving less favorable treatment to digital products from other countries. Article 14.6 and Article 14.9 of the TPP also explicitly state that electronic signatures and electronic contracts apply the same as the physical version. Recognition of electronic signatures and electronic contracts that apply the same as the physical version is also regulated in e-commerce regulations in Indonesia, which can be found in Article 18 of the ITE Law, Article 46 of PP PSTE, and Article 50 of PP PMSE.

3.3 Gap in Indonesia's E-Commerce Regulations on TPP

In general, the basic provisions of e-commerce regulated in the TPP can be said to have been reflected in legal instruments in Indonesia, including the validity of documents and electronic signatures, consumer protection, protection of personal data, and the treatment of electronic contracts which are the same as contracts in the form of electronic contracts. However, some of the regulatory gaps in Indonesia regarding the TPP will be explained below.

3.3.1 ITE Law

In general, the ITE Law is in line with the provisions in the TPP. However, there are several things that have the potential to conflict with the provisions in the TPP, including:

- 3.3.1.1 Article 2 explains that the ITE Law applies to everyone who commits a legal act both within the jurisdiction of Indonesia and outside the jurisdiction of Indonesia, which has legal consequences within and/or outside the jurisdiction of Indonesia and is detrimental to the interests of Indonesia. This means that the ITE Law is still territorial. Meanwhile, the provisions of the TPP are universal and do not have to follow certain country rules (Articles 14.10 to 14.13).
- 3.3.1.2 Article 10 explains that business actors conducting electronic transactions can be certified by a reliability certification agency. This does not conflict with the TPP principle because this certification is not mandatory. However, it should be taken into account that the reliability certification body should not be determined by member countries, so the institution must be universal in accordance with the TPP principles (Chapter 14).

3.3.2 Job Creation Act

The principle of e-commerce in the Job Creation Law also generally does not conflict with the TPP principle, where every business actor who trades goods and/or services using an electronic system is required to provide complete and correct data and/or information as described in Article 65 of the Trade Law, which has been amended in Article 46 of the Job Creation Law. The difference between the two lies in the existence of administrative sanctions that are threatened with business actors who violate the provisions of Article 46 of the Job Creation Law, while the TPP provisions not only regulate the existence of sanctions but also compensation for the injured party (Chapter 16).

3.3.3 PP PSET

Some of the regulatory provisions in PP PSET which can be considered less in accordance with the provisions of the TPP include:

- 3.3.3.1 Electronic contract obligations that must be made in Indonesian if addressed to Indonesian residents (Article 47 paragraph (1)). When compared with the provisions in the TPP, the regulation regarding the obligation to speak Indonesian can be an obstacle for business actors in carrying out electronic transactions in Indonesia. This is contrary to

the TPP principle, where electronic contracts must be applicable to all TPP members.

3.3.3.2 Article 60 paragraph (2) concerning the separation of electronic signatures, namely certified and uncertified electronic signatures. To obtain a certified signature, the signature must be made using the services of an Indonesian electronic certification provider and using a certified electronic signature maker. This can be an obstacle for business actors in carrying out electronic transactions in Indonesia considering that the TPP principle does not regulate the existence of certified and uncertified electronic signatures as can be seen in Article 14.6.1.

3.3.4 PP PMSE

As a derivative regulation of the Trade Law, PP PMSE also contains provisions that have the potential to conflict with the provisions of the TPP, including:

3.3.4.1 Article 3 stipulates that a violation of the principle or principle of good faith can result in the cancellation of the agreement between the parties. Apart from this provision not being regulated in the TPP, the good faith clause is also difficult to prove.

3.3.4.2 Article 9 which stipulates that every PMSE that is cross-border must comply with the provisions of the laws and regulations governing exports or imports and the laws and regulations in the field of information and electronic transactions. This means that the provisions of the ITE Law will apply, where every legal action that has legal consequences in Indonesia will apply Indonesian legal provisions and the consequence is that the PMSE dispute settlement will be carried out in Indonesia. Thus, this Article is contrary to the provisions of TPP Article 28.4.1 regarding the provisions for dispute resolution that are generally applicable, where the plaintiff can choose a forum to resolve disputes that may occur between the parties.

Apart from some of the gaps above, there are several important things regulated both in Chapter 14 of the TPP and the provisions of e-commerce regulations in Indonesia that must be of concern, namely:

3.3.5 Dispute resolution

In the formulation of Article 28.4.1 regarding the provisions for the choice of forum in dispute resolution, it is determined that the plaintiff can choose the forum to resolve the dispute that occurs. Thus, the TPP rules give full freedom to the parties in determining the legal choices they want to pursue in relation to problems that may arise in the implementation of e-commerce.

Meanwhile, Article 2 of the ITE Law and Article 9 of PP PMSE mandate the implementation of Indonesian law, particularly in relation to transactions involving national interests (covering a very broad understanding, namely the legal interests of the Indonesian nation, including but not limited to consumer interests and Indonesian economic interests). . It can be concluded that transactions involving consumers in Indonesia must comply with Indonesian law.

3.3.6 Special Obligations in Running Electronic Transactions in Indonesia

Indonesian legal instruments specifically regulate the obligations that must be obeyed by PMSE business actors in carrying out electronic transactions in Indonesia, including:

- 3.3.6.1 The obligation to appoint representatives domiciled in the jurisdiction of the Republic of Indonesia for foreign business actors who actively offer and/or conduct PMSE to Consumers domiciled in the jurisdiction of the Republic of Indonesia who meet the criteria in the form of number of transactions, transaction value, number of delivery packages; and/or the amount of traffic or access. This obligation is given because business actors are considered to have a physical presence in Indonesia and carry out business activities permanently within the jurisdiction of the Republic of Indonesia, so they need representatives who can act as and on behalf of the relevant business actors (Article 7 PP PMSE).
- 3.3.6.2 The obligation to obtain security clearance for goods and/or services that have an impact on national security vulnerabilities (Article 10 PP PMSE), using an electronic system that has an electronic system eligibility certificate (Article 14 PP PMSE), and prioritizing using Indonesian high-level domain names (.id) for electronic systems in the form of internet sites (Article 21 PP PMSE). The obligation to prioritize the use of Indonesian high-level domain names (.id) for electronic systems in the form of internet sites is a problem for business actors who have been running their business with the .com domain because these business actors have to make massive adjustments to the advertising arrangements that have been implemented so far.
- 3.3.6.3 The obligation to store PMSE data and information for a minimum of 10 (ten) years for data and information related to financial transactions and for a minimum of 5 (five) years for PMSE data and information that is not related to financial transactions (Article 25). The provisions regarding the period of time are calculated from the time the data and information are obtained and still take into account the rights of consumers to request the deletion of all personal data on the managed system if the owner of the personal data declares to leave, unsubscribe or stop using PMSE services and facilities (Article 59 PP PMSE).

3.3.7 Import Duty For Electronic Transmission

PP PMSE stipulates that basically all applicable principles and provisions in laws and regulations governing exports or imports and laws and regulations in the field of information and electronic transactions. Regulations related to exports or imports include the Trade Law and the Job Creation Law, while the law on information and electronic transactions is the ITE Law. The consequence of this provision is that PMSE must pay attention to and comply with policies on domestic trade, foreign trade, and border trade, including regulations in the customs sector. This is contrary to the provisions in the TPP which prohibits the

imposition of import duties on electronic transmissions.

4. Conclusion

The results show that in general the regulation of e-commerce in Indonesia is in line with the provisions of the TPP. However, there are several regulatory gaps between the two, particularly in terms of: 1) the choice of dispute resolution law; 2) the application of administrative sanctions; 3) the use of the national language in this case Indonesian; 4) separation between certified and non-certified electronic signatures; 5) the existence of a principle or principle of good faith which if violated can invalidate the agreement between the parties; 6) the obligation to appoint representatives domiciled in the country where PMSE activities take place, namely the jurisdiction of the Republic of Indonesia; 7) obligation to use dot id domain; 8) the obligation to keep PMSE data and information for a certain period, namely 10 (ten) years for data and information related to financial transactions and 5 (five) years for PMSE data and information not related to financial transactions; and 9) customs enforcement for electronic transmission.

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