



CONSUMER PROTECTION IN ELECTRONIC CONTRACTS: THE CASE OF INDONESIA

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ABSTRACT

This paper aims to provide insights into the consumer protection in e-commerce in Indonesian context. In 2015, ASEAN Economic Community (AEC) which includes Indonesia as a member, was established for a regional economic integration by reducing the transactions costs of trade, improving trade and business facilities, as well as enhancing the competitiveness of Small and Medium-Sized Enterprises sector. AEC is expected to promote electronic transactions. Even though Indonesia has the Law Number 8 Year 1999 on Consumer Protection, this law does not regulate specifically on electronic transactions. In response to this limitation, Indonesia has issued the Law Number 11 Year 2008 on Information and Electronic Transactions and Government Regulation Number 82 Year 2012 on the Implementation of Systems and Electronic Transactions. This is followed by enactment of Law Number 7 Years 2014 on Trade, which regulates general domestic trade, foreign trade, border trade and commerce through the electronic system. The law aims to stem the flood of products imported into Indonesia so that the use of domestic products can be increased. This paper concludes that legislations which regulate consumer protection in electronic transactions are still inadequate thus Indonesia is not fully ready to deal with the consumer protection in e-commerce.

Keywords: Electronic contracts, consumer protection, Indonesia, ASEAN Economic Community.

1.0 INTRODUCTION

Association of Southeast Asian Nation (ASEAN) is a Southeast Asian regional organization comprising of Indonesia, Malaysia, Singapore, Philippines, Thailand, Vietnam, Burma, Laos and Cambodia. In preparing for the 21st century, ASEAN made an agreement to develop an integrated region to form an open, peaceful, stable and prosperous community of the Southeast Asian countries. This is defined in ASEAN Vision 2020 set during the ASEAN Summit by the ASEAN Heads of State / Government in Kuala Lumpur on December 15, 1997. To realize the vision, ASEAN endorsed the Bali Concord II in the ASEAN Summit 9 in Bali in October 2003 by agreeing to establish an ASEAN Community, consisting of three (3) pillars: the ASEAN Political-Security Community (APSC), the ASEAN Economic Community (AEC) and the ASEAN Sociocultural Community (ASCC).

The efforts to achieve the ASEAN Community is also manifested in the ASEAN Charter, signed by ASEAN Heads of State / Government during XIII ASEAN summit in Singapore in

November 2007 coincided with the ASEAN 40th anniversary, which aims to transform ASEAN from a loose organization into a rules-based organization and a legal personality (Fadli, 2014). The ASEAN Charter reaffirms ASEAN provision to establish an ASEAN community by 2015 with ASEAN Economic Community as one of the pillars, where one of the goals is cooperation and regional integration in the economic field. These provisions indicate that the member countries of ASEAN are committed to creating a single market and production base that is stable, prosperous, competitive and economically integrated with the provision of facilities effective for trade and investment in which there is free flow of goods, services and investment; facilitated movement of business persons, professionals, talents and labor; and freer flow of capital; reduce poverty and narrow the development gap within ASEAN through mutual assistance and cooperation (Charter Association of Southeast Asian Nations, 2007).

The existence of the ASEAN Community, especially the ASEAN Economic Community indirectly leads to the liberalization of international trade, where the goods, services, investment, capital and labor within the scope among countries in ASEAN can be exchanged easily (Falvey & Kim, 1992). The development of information technology and telecommunications in the form of the internet also contributes in facilitating the process of international trade liberalization among ASEAN countries (Smedinghoff, 1996). Advances in information technology, especially the Internet media, simplify and accelerate the exchange of goods, services, investment, capital and labor. In the trade sector for example, a consumer does not need to leave home and wait in line to get the desirable services and / or goods because the process of booking / reservation can be done from a distance (Department of Communication and Information, 2006).

In terms of promotion, businesses also do not require much cost compared to the conventional promotion, because through the internet, the businesses do not have to pay any booth fee and can operate for 24 hours non-stop. Via the internet, the exchange of information can be done quickly, accurately and relatively cheap. So with the ASEAN Economic Community in 2015, entrepreneurs from ASEAN countries certainly prefer to market their products electronically to Indonesia to reduce the cost incurred and speed up the transaction process. However, the convenience offered by the implementation of electronic transactions in the internet pose their own problems, particularly the legal issues arising from electronic transactions. One of the issues relate to consumer protection from the electronically marketed product, both the goods and / or services. For example the products, goods and/or services ordered are not of the same quality with the ones portrayed online (Roger & Gaylord, 2002).

The Government of Indonesia has issued the rules in *Ius Constitutum*, namely Law No. 8 of 1999 (hereinafter referred to as Law No.8/1999) on Consumer Protection to protect the consumers from the business operators in Indonesia. However, Law No. 8/1999 does not specifically regulate the consumer protection from business operators in terms of electronic transactions conducted by consumers and businesses. In Indonesia, the provision of electronic transactions is regulated separately in Law No. 11 of 2008 on Information and Electronic Transactions (hereinafter referred to as Law No. 11/2008) and Government Regulation No. 82 Year 2012 on Operator System and Electronic Transactions (hereinafter referred to as PP No. 82/2012) (Sukarmi, 2008). In addition, to welcome the era of free trade between ASEAN through the ASEAN Economic Community, the Indonesian government also issued Law No. 7 of 2014 on trade (hereinafter referred to as Law No. 7/2014). The issuance of this law is the strategy to block the vast imported products from coming into Indonesia so that the use of

domestic products can be increased. Law No. 7/2014 sets of regulations on trade through electronic media and some provisions to protect consumers' interests that are identical to the provisions of Law No.8/1999 and Law No.11/2008.

Some of the legislation provisions reflect the government's effort to provide legal protection for the population, especially the Indonesian citizens as consumers to businesses during electronic transaction process. However, the provisions are still sectoral. There is always a possibility for a legal vacuum including overlapping arrangement or conflict of rules within the legislation which could potentially lead to injustice and legal uncertainty in Indonesia. For this reason, Indonesia's readiness needs to be studied, specifically the legislation on the consumer protection in Indonesia from businesses during the electronic transactions in ASEAN Economic Community. This is particularly important considering the presence of the ASEAN Economic Community, which makes it possible for any businessman from ASEAN countries to market their products, goods and / or services in Indonesia. This may lead to a large potential of fraud and consumers' loss in Indonesia. To anticipate these problems and provide protection and legal certainty for the people of Indonesia, especially Indonesian citizens, the study of the readiness of the acts and regulations in Indonesia in facing the ASEAN Economic Community is crucial.

The discussion in this article includes: 1) the setting and scope of electronic transactions in Indonesia; 2) the issues of consumer protection in electronic transactions in the country; and 3) the readiness of Indonesia legislation related to consumer protection in electronic transactions in facing the ASEAN Economic Community.

2.0 THE SETTING AND SCOPE OF ELECTRONIC TRANSACTIONS IN INDONESIA

One of the pillars of the ASEAN Economic Community is ASEAN as a region with high economic competitiveness. One of the strategies is to formulate policies and infrastructure in the field of e-commerce (Diana & Tjiptono, 2007). E-commerce or trading through electronic media is primarily a contract trade transactions between sellers and buyers using electronic media, thus the process of ordering goods, payment transaction to delivery of goods are communicated electronically, for example through internet (Friedman, 1999). In Indonesia, electronic transactions are governed by Law No. 11 / 2008 and PP 82/2012, which is based on Article 1 paragraph 2 of Law No. 11/2008 jo. Article 1 paragraph 2 of PP No. 82/2012.

Electronic transactions or e-commerce is established in an electronic contract (Raharjo, 2002). Under Article 1 point 17 of Law No. 11/2008 jo. Article 1 point 15 PP 82/2012, the electronic contract is defined as "an agreement of the parties created through the electronic system". In other words, electronic transactions are the form of an agreement or contract conducted through electronic media referred to as the electronic contracts, and the electronic contract can not be separated from the principles of contract law as set out in Book III *Burgelijk Wetboek* (hereinafter referred BW).

There are three stages which need to be considered in making a contract or agreement: i) pre-contractual stage, namely the offer and acceptance; ii) contractual stage, namely the rapprochement statement of wills between the parties entered into an agreement (meeting of mind); and iii) post-contractual stage, namely the implementation of agreement (Salim, 2006). At the stage of pre-contractual and contractual terms, applicable provisions regarding the validity of the contract as stipulated in Article 1320 BW are the agreed terms that bind

them; a certain thing (object of the contract) and permitted causes. The first and the second terms of the agreement with respect to the subject are called subjective terms. While the third and the fourth requirements with respect to the object of the agreement are called objective conditions. If an agreement is not eligible subjective, such agreement can be canceled (*vernietigbaar / voidable*), while if an agreement is not eligible objective, such agreement is null and void (*nietig / null and void / void ab initio*) but neither null nor void can be canceled should the court decision is legally binding (Sujayadi, 2013).

In addition to the validity of the contract terms as provided in Article 1320 BW, an electronic transaction should qualify the validity of the information exchanged during the transaction. If it is proven not meeting any of these requirements, both parties may apply for the cancellation of the transactions. The requirements are information security, authenticity, integrity, confidentiality, non-repudiation and availability. Authenticity is associated with the source and origin of the data whether the data sent is original and whether the party is authorized to send such data. Integrity is related to the accuracy and completeness of the data being sent so that the data can be trusted. Confidentiality of data refers to the protection of the data sent that it is known only to certain parties. Non-repudiation is an evidence whether an action has or has not been done in which the system must be able to ensure that one cannot deny that he has or has not done something. Availability is to guarantee that the information on the Internet should be available in the retention period for any purpose, so users can access their data. This is as stated in Article 16 of Law No. 11/2008 jo. Article 38 PP 82 / 2012 (Friedman, 1999).

There are theories during the contractual stage when the meeting of mind occurred between the parties that determines the momentum of the contract in the situation when the parties do not meet face to face, namely: 1) the theory of the statement (*uitings Theorie / expedition theory*) which dictates that the contract is conceived at the time of acceptance when an offer was expressed; 2) the theory of delivery (*verzending Theorie / transmission theory*) which the contract is conceived at the time of acceptance made during the shipping; 3) the theory of reception (*ontvangs Theorie / reception theory*), at which time of the formation of the contract is at the moment the acceptance, no matter whether the letter is opened or left open; and 4) the theory of knowledge (*vernemings Theorie / information theory*) at which time the formation of the contract is at the moment when the contents of acceptance is acknowledged by the offeree parties. Determination of the formation of this agreement is important because an offer may be withdrawn before the offer is accepted / received by the offeree.

The norm in the post-contractual stage is the norm that has been agreed upon in the agreement based on the *of pacta sunt servanda* principle as defined in Article 1338 BW. In this stage, the contractual relationship is initiated between the parties and give rise to an engagement between the parties, so that the parties must implement their respective obligations (Agustina, 2012). When these obligations are not implemented, the party who does not perform its obligations is considered breaching the contract and must fulfill the agreement; or fulfill the agreement plus a compensation; or compensation only; or cancellation of a reciprocal agreement; or cancellation of the agreement with compensation (Subekti, 2008).

Theoretically, electronic transactions via the Internet itself can be categorized into four patterns, namely: 1) Business to Business (B2B), i.e transactions where both parties involved in the transaction are companies or businesses who already know each other and the system is

not for public (closed access) and used continuously; 2) Business to Consumer (B2C), i.e transactions between companies or businesses with consumers / individuals, where vendors and buyer do not know each other and the system is open to the public and for disposable usage; 3) Consumer to Consumer (C2C), i.e transactions where individuals sell goods to each other and the character of the system is open to the public with not too tight regulation, and the amount of a commodity bought and sold by the vendor to the buyer is little or generally second-hand goods with Cash on Delivery (CoD) payment systems. Generally, this transaction pattern is used on the internet auction site; and 4) Government to People (G2P), a transaction with more emphasis on the use of the Internet for public service and fulfillment of the principle of openness in the Good Corporate Government (GCG) (Zein, 2009).

In general, the transaction modes can also be categorized into four based on the ways of the agreement being accomplished and how the agreement is being implemented. The first mode is where the development of the agreement is done offline with the implementation of the agreement is done offline. This mode of transaction usually occurs in conventional trading without involving electronic media. The second mode is where the development of the agreement is done offline with the implementation of the agreement is done online. This mode is commonly used in B2B transaction. The third mode is where the development of the agreement is done online with the implementation of the agreement is done offline. This transaction mode is commonly used in transactions with the tangible objects (tangible personal goods) traded with B2C pattern. The fourth mode is where the development of the agreement is done online with the implementation of the agreement is done online. This mode is commonly used in transactions with the intangible objects (intangible personal goods) (Zein, 2009).

In electronic transactions via the Internet with B2B pattern, the establishment of agreements generally occurs via Electronic Data Interchange (EDI), where the format of transactions is carried out in the form of fixed-text that has been negotiated earlier offline. This is followed by the implementation and operation through an automated system (Bajaj & Nag, 2000). In EDI systems, there is a functional acknowledgment to be received automatically by offeror after the offer has been sent stating that the order is received. This functional acknowledgment is not an acceptance, but rather just an acknowledgment that an order can be read by the system. Acceptances occur during the reception of the next notification stating that the order has been approved.

In Indonesia, regulation regarding the time of the deal through the media under Article 20 paragraph (1) and (2) of Law No. 11/2008 states that: "(1) Unless otherwise provided by the parties, electronic transactions occur at the time of bidding transactions sent was received and approved senders Recipients; (2) Approval of Electronic Transaction offer referred to in paragraph (1) shall be done by electronic reception acknowledgement". The transmission and reception itself is set in Article 8 of Law No. 11/2008 which states that:

- 1) Unless otherwise agreed, the time of delivery an Electronic Information and / or Electronic Records is determined at the time of the Electronic Information and / or Electronic Documents have been sent to the correct address by the sender, into an Electronic System appointed or employed by Recipient and has entered the Electronic Systems located out of Sender's control.
- 2) Unless otherwise agreed, the time of receipt of an electronic information: and / or electronic documents is specified at the time of the Electronic Information and / or Electronic Records enter the electronic system under the control of the entitled Recipient.

- 3) In the event that the Recipient has to appoint a certain Electronic Systems to receive electronic information, acceptance occurs when the Electronic Information and / or Electronic Records enter the appointed Electronic Systems.
- 4) In the event of two or more of Information Systems used in sending or receiving electronic information and / or electronic documents, then:
 - a) The delivery time is when the Electronic Information and / or Electronic Records enter the Recipient Information Systems which are beyond the Sender's control.
 - b) Reception time is when the Electronic Information and / or Electronic Records entered Information System under the Recipient's control.

Article 20 (1) of Law No. 11/2008 articulates that electronic transactions occur at the time of bidding transactions sent by Sender have been **received** and **approved** by Recipient. Paragraph (2) of the article states that approval of electronic transactions with the declaration of acceptance must be done electronically. Based on the formulation of the article, it is known that Indonesia, as a country embracing civil law system also embraces the theory of reception (Ontvangs Theorie / Reception Theory) to determine the time of the agreement. The provisions of Article 20 of Law No. 11/2008 does not distinguish between the time development of the agreement through the media chatting or video conference that occurs once (instantaneous communications) and the time of formation of the deal through e-mail and via websites that are not immediately occur (not instantaneous communications), but rather associate the two using the theory of reception (Ontvangs Theorie / reception theory).

However, the provisions of Article 20 of Law No. 11/2008 do not distinguish between the acceptance of the perfect offer and imperfect offer in terms of obligation to provide confirmation by the party that offers (offerror) that he has received the acceptances, causing legal uncertainty. Article 20 (1) and (2) of the Law No.11 / 2008 seems to require confirmation by the parties that offer (offerror) to the person receiving the offer (offeree) that the acceptances being sent have been received. Supposedly, the perfect offer is not needed for such confirmation because it has been initiated in the agreement. Meanwhile, the imperfect offer needs a confirmation from the offers (offerror) to provide certainty for the parties on the acceptance, as conditional acceptance is still a counter offer that requires acceptance again to produce the agreement.

In addition, Law No. 11/2008 also does not regulate where the agreement should be established, including the place where the offer and acceptance are conducted. This suggests that Indonesian law only recognizes the place of contract formation that is performed offline, which requires the physical presence of the parties to negotiate and conclude contracts. However, when referring to the provisions of the UNCITRAL, the place where the formation of the agreement can be considered to occur is the place where offerror conducts business activities or in the exact location of actual offerror.

3.0 CONSUMER PROTECTION IN ELECTRONIC TRANSACTIONS IN INDONESIA

Law No. 8/1999 is not the first and last of the law that is governing consumer protection, because before the enactment of Law No. 8/1999 there are laws to protect consumer interests, such as Article 1473 BW to Article 1512 BW and Article 1320 BW to Article 1338 BW which govern the actions related to the buyer protection and protection to the parties involved in the agreement (Rajagukguk et al., 2000). For instance, Law No. 3 of 1982 is regarding Company Registration Requirement; Law No. 36 of 2009 is on Health; and Law No. 10 of

1998 is on the Amendment of Law No. 7 of 1992 which is on Banking. The enactment of Law No. 8/1999 also does not rule out the passing of new laws that basically contain provisions that protect consumers because it is an umbrella that integrates and strengthens law enforcement in the field of consumer protection.

Pursuant to Article 1 paragraph 1 of Law No. 8/1999, "Consumer protection is the effort that guarantees the legal certainty to provide protection to consumers" (Nasution, 2000, p. 37). Consumers referred to in Law No. 8/1999 is "everyone user of goods and / or services available in the community, for their own benefits, their families, other people and other living beings and not commercialized" which in economic literature is known as the end consumer (Nasution, 2000, p. 29). It is suitable with the general view that the consumer is "the end user of the goods and services (Uiteindelijke Gebruiker van Goederen en Diensten) handed to them by the employer (ondernamer)". There are some Acts that define the consumers as end consumers and in-between consumers, for example in the banking sector through the Financial Services Authority Regulation No. 1 / POJK.07 / 2013 on Consumer Protection Financial Services Sector dated August 6, 2013 (hereinafter referred POJK No. 1 / POJK.07 / 2013).

In connection with electronic transactions, consumer protection issues arise in transactions with B2C pattern as in B2C transactions. The consumer is the weaker party and has the potential to be cheated and harmed by businesses, both in the stages of pre-contractual, contractual, and post-contractual (Hernoko, 2010). B2C transaction pattern is basically identical to the consumer's conventional contract. General consumer protection issues that could potentially cause harm to consumers, among others, are the problem of privacy, standard clauses, the subject of legal authenticity, the subject of legal validity, Electronic Transactions Ordinance on advertisement, proof, protection of Intellectual Property Rights (IPR), security, jurisdiction and applicable law.

In connection with the privacy protection, Law No. 8/1999 does not regulate legal protection for consumers against his/her personal data. Setting legal protection of the person's personal data can be found in Article 26 (1) of Law No. 11/2008 which states that: "Unless otherwise provided by legislation, the use of any information through electronic media concerning the person's personal data must be carried out with the consent of the person concerned". The scope of the definition of personal data held by Article 26 paragraph (1) of Law No. 11/2008 can be found in its explanation, namely: a) the right to enjoy private life and free from all kinds of disturbances; b) the right to communicate with others without anyone spying; and c) the right to oversee access to information about the private life and personal data.

Basically, the legal protection of personal data by Article 26 of Law No. 11/2008 is sufficient, in addition to the extensive scope of the definition of personal data being adopted. However, the provisions of Article 26 of Law No. 11/2008 only provide repressive legal protection, where the consumers have the right to sue only when their personal data have been breached. So there are no repressive efforts to protect the consumers' personal data prior to the violation of personal data (Makarim, 2005; Dewi, 2009).

In connection with the standard clauses, it can be ascertained that in electronic transactions, especially transactions with B2C pattern, the use of standard clauses including the standard contract is an absolute must to accelerate the process of transaction, although there is potential for the imbalance position between businesses and consumers, which

eventually led to a detrimental agreement to either party especially the consumer. Basically, Law No. 8/1999 does not prohibit businesses to create a standard clause on any documents and / or the trade agreement of goods and / or services, as long as all the standard agreements and the standard clauses do not include the provisions of the exoneration clause (exemption clause) as prohibited in Article 18 paragraph (1) of Law No. 8/1999. In addition, the agreements should not be "shaped" as prohibited in Article 18 paragraph (2) of Law No. 8/1999 such as: 1) not to transfer the responsibility to the consumer unfairly; and 2) not to impose a duty on the consumer unfairly; and 3) must be written in the form seen by the consumer, easy to read and understand by the consumer (Widjaja & Yani, 2000). If a standard clause does not meet these standards, then the clause is null and void. The provision is also applicable in electronic transactions, as defined in Article 48 paragraph (2) PP 82/2012 which states that, "Electronic Contracts made with standard clauses shall be in accordance with the provisions of the standard clauses as stipulated in the legislation".

Problems concerning the standard clause also imply the problem of jurisdiction and applicable law when an electronic contract involves more than one jurisdictions, where businesses in general have set up a contract containing a large choice of forum and choice of law (Buana, 2007). In this regard, Law No. 8/1999 has a weakness, because it cannot reach out to businesses domiciled abroad. This can be seen in the formulation of Article 1 paragraph 3 of Law No. 8/1999 which states that "Businesses are any individual or business entity, established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either alone or jointly with the agreement of business activities in various economic fields".

To overcome this, Law No. 11/2008 attempts to expand the reach of the law through the implementation of Article 2 of Law No. 11/2008. The Article is extending the jurisdiction of the courts of Indonesia, but in a practice such article cannot be applied simply because the principle of equality between countries has to be prioritized, because equal states do not have jurisdiction over each other. The principles are implicit in the principle of "par in parem non habet imperium" (Starke, 1988, p. 279). Therefore, the implementation of the jurisdiction of the courts of Indonesia and the application of Indonesian law remains based on Indonesia legislation regulating it, among others, the General Bepalingen Wetgeving voor Indonesie (AB) and Het Herziene Inlandsch Reglement (HIR).

4.0 THE READINESS OF INDONESIA IN PROTECTING CONSUMERS IN ELECTRONIC TRANSACTIONS

The Indonesian government has issued Law No.8/1999, Law No.11/2008, PP 82/2012 and Law No.7/2014 to provide legal protection to consumers in electronic transactions. However, the provisions of the legislation are still not enough to provide legal certainty and legal protection to consumers during electronic transactions. This is shown by the many weaknesses of the setting of Law No. 8/1999, Law No. 11/2008, PP 82/2012 and Law No. 7/2014, namely:

- a) Law No. 11/2008 mandates nine Government Regulations, but up to now, only one Government Regulations are enacted, namely PP 82/2012.
- b) The provisions of several articles in Law No. 11/2008 cannot be implemented, one of which is the provision of Article 2 of Law No. 11/2008 regarding the expansion of the relative of competence Indonesian court on the transaction and electronic information that will result in losses in Indonesia. It contradicts the principle of sovereignty state.

- c) Law No. 8/1999 embraces semi strict liability, where businesses are responsible for providing compensation for the damage or loss of consumers, but the businesses is liable to prove whether there is an element of fault. It will certainly be difficult, if applied in the ASEAN Economic Community, considering that the transaction will take place across countries. To ensure the business can be held accountable for the defective product, it must first prove the existence of defect from the business even though such evidence will be the liability of the business. But Indonesia should follow the principle of product liability so far by embracing strict liability, where to hold the businesses accountable does not require refutation; it just needs to prove that the products manufactured or traded by the business are defect.
- d) Both Law No. 11/2008, Law No. 7/2014 and PP No. 82/2012 have not regulated that testing of the legal validity of subjects in electronic transactions by the Reliability Certification Body as an obligation, so that potentially invalid entrepreneurs with aims to commit fraud through electronic transactions in Indonesia cannot be avoided, especially with the ASEAN Economic Community.
- e) The provisions regarding the data privacy in Law No. 11/2008 are inadequate because they only regulate repressive legal protection through filing a lawsuit without setting the repressive legal protection in order to avoid the use of data privacy without permission.
- f) The provisions concerning the standard contract, in particular regarding the choice of law and choice of forum by the business do not contradict the Law No. 8/1999.
- g) Regulations on the formation of agreement by Law No. 11/2008 are incomplete, where Law No. 11/2008 does not discriminate on the formation of the agreement on a perfect and imperfect offer as well as the development of the agreement through instantaneous communication and notinstantaneous communication. It does not provide legal certainty for consumers because as long as the acceptances have not been done, the deals can still be withdrawn and canceled.
- h) Settings on Act 11/2008 also do not regulate the location of an agreement, even though it is one of the benchmarks in determining the jurisdiction of the competent court of disputes arising from this transaction.
- i) Nullification always poses as a threat during electronic transactions because there is always the potential that the consumers and businesses are not yet legally competent. Indonesia should embrace NBW provisions of the Netherlands, where the cancellation of electronic transactions can only be made by the judge to consider the unfair gain of the capable parties and loss of the incompetent parties.

Based on the shortcomings of Law No.8/1999, Law No. 11/2008, PP 82/2012 and Law No. 7/2014, it is obvious that legislations which regulate consumer protection in electronic transactions is inadequate, especially the ones related to the ASEAN Economic Community which would involve more than one state jurisdictions.

5.0 RECOMMENDATIONS

There is a number of recommendations for the Indonesian Government in order to strengthen the readiness of Indonesia to face ASEAN Economic Community, among others:

- a) reaffirm the scope of consumer protection in Indonesia, whether it is only for the final consumers or for the in-between consumers;
- b) oblige for every business the legal validity of subjects in electronic transactions by the Reliability Certification Body that would market their products online in Indonesia;
- c) accelerate the formation of a Government Regulation implementing Law No. 11/2008 and others;
- d) reinforce its domestic law related to jurisdiction of Indonesia on the transaction and electronic information, for example by

accommodating the provisions of Article 100 of the *Reglement op de Burgerlijke Rechtsvordering* (Rv) as the basis for the implementation of the forum contractus (jurisdictions where legal actions are made) and the forum solutions (jurisdiction legal actions are carried out); e) strategize steps to provide preventive legal protection of data privacy, for example by imposing restrictions or prohibition of certain data requests in electronic transactions; f) regulate similar arrangements as in Europe, that a standard clause is stipulated by businesses, particularly clause on forum selection and choice of law will not take effect unless the clauses are selected together with the consumer at the time of dispute or chosen by the consumer before any dispute occurs ; g) reassert arrangements regarding the time of agreement formation by differentiating the agreement formation on perfect and imperfect offer as well as the development of the agreement through instantaneous communication and non-instantaneous communication; h) regulate the location of an agreement with reference to the provisions of the UNCITRAL; and i) issue regulations on nullification terms of an electronic transaction related to competence requirements with reference to the provisions of the NBW, so not every electronic transaction can be canceled because one side is incompetent parties, but must consider unfair gain of the capable parties and losses from the incompetent parties, so the legal certainty for electronic transactions itself can be obtained.

Given the formation and changes in legislation in Indonesia, accommodating the recommendations mentioned above is not easy, so they can be achieved by legal breakthrough through judicial decisions so that it can immediately fill the existing legal vacuum to enforce legal protection for consumers.

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