

CHAPTER I

INTRODUCTION

1.1 Background

Intellectual property in E-Commerce is perhaps the most neglected, yet it is the most influential component of E-Commerce. In reason that either because it is few number of people understood this issue, or because the importance of the connections to E-Commerce are not apparent. In the matter of fact, Intellectual Property has been commonly known in Indonesia. In regard of the rapid growth of the world of information technology and creative industries, the awareness of the importance of Intellectual Property is therefore urged to be enhanced. Knowing the fact that this era is a digital world, anything is as unpredictable. Digital technology will obviously have an impact on the economic growth of a country because of its speed reaching almost in all sectors. That is why today the efficiency of the world economy becomes more dependent on high-tech production development, volume of intellectual capital and level of investments in it. More than 1 billion jobs and 14.6 trillion US dollars in workers' wages are digitized by today's technology, which finds new, faster, easier and cheaper ways.¹ Impacts that occur due to the flow of information is increasingly massive and easy to get, making people mobility is demanded faster.

¹ Agus Yulianto. Revolusi Digital Baru Dimulai. Republika, 27 September 2017. Web. [http: / / www.republika.co.id / berita / jurnalisme-warga / wacana / 17 / 09 / 26 / oww08j396-revolusi-digital-baru-dimulai](http://www.republika.co.id/berita/jurnalisme-warga/wacana/17/09/26/oww08j396-revolusi-digital-baru-dimulai), accessed on 27 September 2017.

In the 1990s, even until in the early 2000s, most people will be confused when asked about content manager, online marketing, content marketing, web editor, or online shop. Nowadays, the society and even the efficiency of the world economy becomes more dependent on E-Commerce activities.

1.1.2 Form of Conventional Business

In today's modern era, we often encounter various online trading sites such as *Lazada*, *Tokopedia*, *Bukalapak*, *OLX* etc. or often known as online business. The rise of online business is happening due to the development of the level of human knowledge and developing technology that makes business opportunities even greater. In some ways, there is a difference between an online business and a conventional business, among them is:²

Online Business, is an activity or sale-purchase transactions conducted through internet media to gain profit. With advantages of doing business online are such as:³

- 1) The scope of marketing is broad, not limited to the surrounding area.
- 2) Can be marketed to all over the archipelago even abroad.
- 3) Does not require many / excess stock of goods.
- 4) Can be done anywhere as long as they have good internet access.

² Budi Wahono. Pengertian Bisnis Online dan Bisnis Konvensional. February 24, 2017. Web. [http://budiwahono.com / pengertian-bisnis-online-dan-bisnis-konvensional /](http://budiwahono.com/pengertian-bisnis-online-dan-bisnis-konvensional/), accessed on 6 December 2017.

³ *Ibid.*

- 5) Goods ordered will be wrapped neatly and directly delivered to the destination.
- 6) Does not require large capital.

Meanwhile, the disadvantages of doing business online are as followed: ⁴

- 1) Because the product cannot be seen directly, the order becomes less convincing.
- 2) Many online business sites that deceive consumers so that consumers should be more careful in choosing shopping site online.
- 3) In delivering an order item, sometimes some online business sites deliver the goods inappropriately in time.

Conventional Business, or more often known as offline business is a trading activity or a transaction that is done directly, face to face between the seller and the buyer. Regarding the advantages in conventional business, for instances are: ⁵

- 1) Direct buyers can see the products to be purchased so that buyers do not feel sincere about the product to be purchased, buyers can also choose their own products.
- 2) Generally, conventional businesses have their own place or kiosk so buyers can visit kiosks and can directly meet with sellers.

⁴ *Ibid.*

⁵ *Ibid.*

- 3) Have a lot of stocks so that if at any time buyers want to buy the product, they do not need a long time to get the product.
- 4) It is guaranteed, because besides seeing the goods directly, the buyer can also know the seller directly (face to face), so that fraudulent actions will occur rarely.

The disadvantages in conventional business are as followed below: ⁶

- 1) The scope of marketing is limited, if you want to expand the scope of marketing, it must open branches in various regions.
- 2) Requires a large enough capital because usually conventional business needs a place to market their products.
- 3) Requires a lot of stock, this also affects the capital issued so that capital becomes increased.
- 4) If the buyer wants to buy goods, then they have to go to the store where the goods are sold.

Further, technology that continues to grow and advance, especially in the field of internet has brought many positive things for human life. Various features and applications created by developers increasingly help people more practical in various aspects of life, one of which is how to shop and business transactions. Then, "E-Commerce" becomes a popular term.

⁶ *Ibid.*

1.1.3 The Influence of Digital Technology in Business Activities

Along with such very fast development of the internet, of course there will be followed by the progress of E-Commerce business and start up in Indonesia. Competitions between online business actors may be increasingly high; investors may be more interested in investing with big E-Commerce and startup because they already have many customers and markets in Indonesia. Meanwhile, regulations from the government may limit the movement of E-Commerce and start-up in Indonesia in 2017.⁷ There are four organizations that have role in making E-Commerce regulation namely Ministry of Commerce, Ministry of Communication and Informatics, Ministry of Finance through Agency of Financial Services Authority (OJK) and Bank Indonesia. And the four organizations will integrate to form a new policy to manage E-Commerce and startup in Indonesia.

1.1.4 Problems and Challenges of E-Commerce

To achieve the expected goals, of course there are challenges for the perpetrators of E-Commerce in Indonesia. According to the Chairman of Indonesia E-Commerce Association (IDEA), Aulia E. Marinto, in the implementation of Indonesia E-Commerce Summit & Expo (IESE) 2017, stated that some of the main challenges of E-Commerce include online transaction security, logistics and etc. However, the fundamental challenge that must be faced

⁷ <http://www.republika.co.id/berita/jurnalisme-warga/wacana/17/09/26/oww08j396-revolusi-digital-baru-dimulai>, accessed on 1 October 2017.

is the need for synchronization efforts that must be pursued by all associations, organizations, industries and E-Commerce actors in order to achieve maximum results.⁸ The most common problem is the breakdown of security systems for online transactions.

Some examples of the break-in of E-Commerce security systems are what happened to *Lazada* previously in 2016. Reported earlier that a young man named Tri Kurniawan Darmoko claimed to have lost millions of dollars by transactions made people who are not responsible.⁹

The number of regulations will be a new challenge for E-Commerce and startup businesses, especially for those who are still in the business development process. Thus, which will be able to survive in the face of E-Commerce and startup competition in 2017 later are those who have good business and strong capital.¹⁰

1.1.5 The Function of Intellectual Property Towards E-Commerce

Further, there are several reasons why Intellectual Property is important to E-Commerce and also the vice-versa. E-Commerce is more than other business systems, often involves selling products and services that are based on Intellectual Property and its licensing. Music, pictures, photos, software, designs, training

⁸ https://www.kompasiana.com/kompasiananews/perusahaan-e-commerce-dan-tantangannya-di-pasar-indonesia_5923fcaa549773c856a076ab, accessed on 1 October 2017.

⁹ *Ibid.*

¹⁰ <https://infopeluangusaha.org/pengertian-bisnis-e-commerce-beserta-contohnya/>, accessed on 1 October 2017.

modules, systems, etc.¹¹ can all be traded through E-Commerce, in which case, Intellectual Property is the main component of value in the transaction. On that account, Intellectual Property Right is therefore should be exist in order to protect against piracy, disclosure of trade secrets and unfair competition, or unless or else, the whole businesses can be destroyed. That makes Intellectual Property Right an asset that is worth more than any tangible asset. This can be seen most clearly in relation to technology and the digital economy.

Intellectual Property is involved in making E-Commerce work. The systems that allow the Internet to function – software, networks, designs, chips, routers and switches, the user interface, and so on¹² – are forms of Intellectual Property and trademarks as well, and often protected by Intellectual Property rights.¹³ In reason that the E-Commerce based businesses usually hold a great deal of their value in Intellectual Property; so, the valuation of each E-Commerce business' will be affected by whether they have protected their Intellectual Property. Many E-Commerce companies, like other technology companies, have patent portfolios and trademarks that enhance the value of their business.

Without Intellectual Property practices and laws, hard work is stolen and spread around the globe without paying the Author for their labor. Technical

¹¹ Sudaryat, Sudaryat, and Rika Ratna Permata. *Hak Kekayaan Intelektual*. (Bandung: Oase Media, September 2010), pg. 21.

¹² SJ, P.T Joseph. *E-Commerce: An Indian Perspective*. 5th ed. (Senopat, Delhi: Asoke K. Ghosh, 2015), pg. 513.

¹³ *Loc.cit*, pg. 21.

security is necessary to deter the less proficient thief and Intellectual Property laws are required to deal with the more serious criminal.

The two primary areas that hereby readers should be concerned about are¹⁴:

- 1) Safeguarding our own Intellectual Property
- 2) Violating someone else's Intellectual Property

In recent years, there has been much publicity about the unlawful distribution of Intellectual Property-protected music, films, art, photos, scripts, and software (“content”) on the Internet.¹⁵ These unauthorized downloads often violate national laws of copyright.¹⁶ In reason that the ease with which digital files can be downloaded, unauthorized copying of content has been a major problem causing the loss in revenue for the owners of these rights. Such violations of Intellectual Property owned by individuals or groups alike violate the rights of the intellectual owner. More specifically, a violation of the intellectual ability of a person or group equals not appreciating the originality of a work. In other words is called cleverness that has been underestimated or dishonored.¹⁷ A common mistake is to reveal Intellectual Property before applying for property protection. Likewise, in many countries making trade secrets automatically disperse protection.

¹⁴ *Ibid.*

¹⁵ Henry Soelistyo. *Hak Kekayaan Intelektual*. 1st ed. (Jakarta: Penaku, 2014), pg. 286.

¹⁶ *Ibid*, pg. 288.

¹⁷ *Ibid.*

Through this matter, the verification in accordance to provisions in the agreement concerning ownership and Intellectual Property Right is hereby important. Also, a consultation with legal adviser prior to disclosing anything pertaining to the Intellectual Property. In order to make sure piracy or stealing other's idea for a third party. For such violence resulted nowadays inventors are often hesitant to reveal the details of their invention, for fear that someone else might copy it; this leads to keeping inventions secret which impedes innovation.

Looking at the correlation between telecommunications, industry and commerce, it will appear that the real business network is an essential facility for the growing market of electronic service providers and means of trading. For the growth of the application and content industries, the implementation of the services and the communication network must be discovered maturely to carry out the principles of *network neutrality*¹⁸ well. This is an important issue that has been discussed in the Internet Governance Forum.

1.1.6 Intellectual Property Rights and E-Commerce Regulation

In the context of this paper, it is appropriate to use the system approach to look at related legal instruments including Civil Code and other organic legislation such as Consumer, Copyright, Telecommunication, Brand, etc. in the framework of solving problems in the short term, while awaiting the emergence of the Law of E-Commerce or Cyber Law which is comprehensive and integral.

¹⁸ Steve Lohr. *Net Neutrality Is Trump's Next Target*, Administration Says. (New York Times, March 31, 2017).

Sunaryati Hartono asserted that some of the rules of law which are pillars / foundations of Cyber Law especially E-Commerce law are as follows:

- 1) Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Competition.

Inside this need to be emphasized some important things to note in terms of the use of internet sites. Especially in the case of monopoly can also occur in the field of information technology such as identifying software and hardware products as in the case of US Vs Microsoft.¹⁹ In the case of unfair business competition, this may occur in the form of *passing off* acts as the use of a brand as a domain name without the owner's permission.²⁰

- 2) Law Number 8 Year 1999 concerning Consumer Protection.

That there are some basic rights that must be considered by the parties in terms of consumer protection that must be obeyed by E-Business entrepreneurs.

Basic consumer rights to note include:

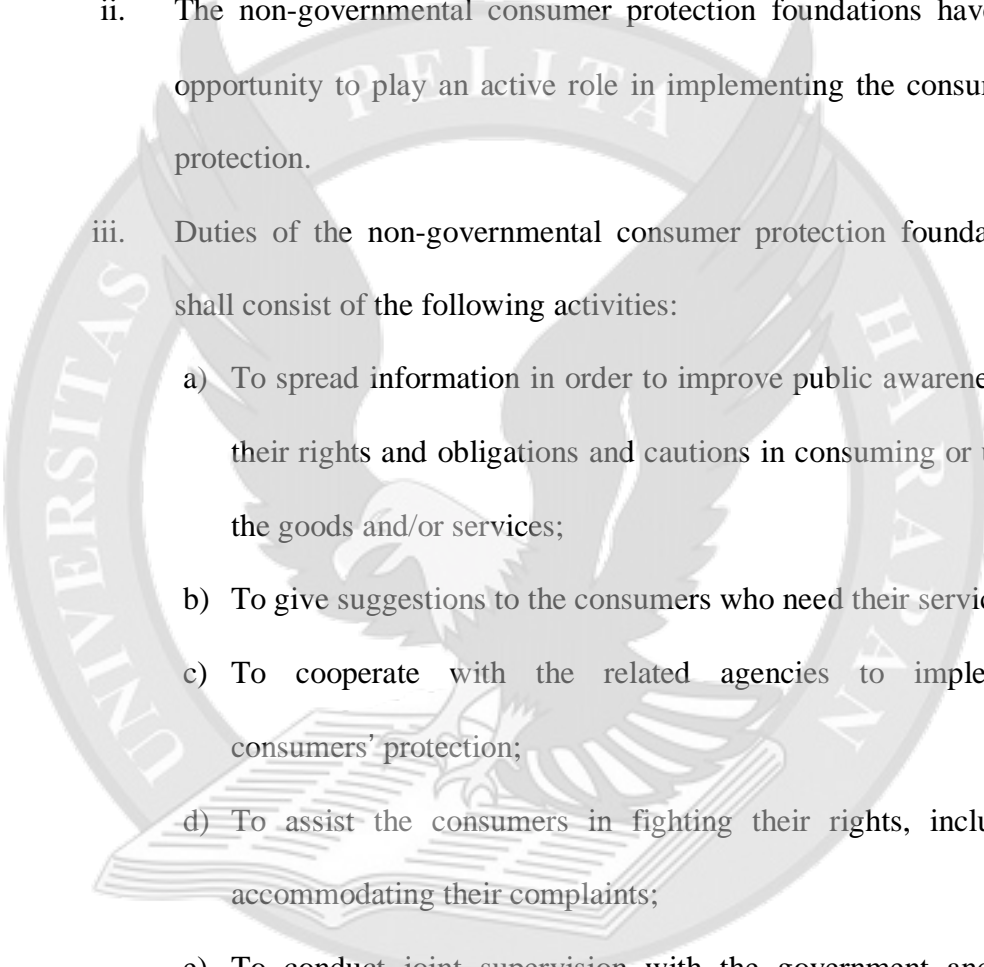
- i. Right to be heard;
- ii. Right to get correct information on the goods consumed;
- iii. The right to obtain compensation for the consumer goods which is inconsistent with that notified by the entrepreneur;
- iv. Right to equal treatment.

¹⁹ Sunaryati Hartono. *Politik Hukum Menuju Satu Sistem Hukum Nasional*. Alumni. (Bandung: 1991), pg. 64-65.

²⁰ *Ibid*.

Also, as stipulated in Article 44 concerning Non-Governmental Consumer

Protection Foundations:

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- i. The government recognizes the nongovernmental consumer protection foundations that meet the requirements.
 - ii. The non-governmental consumer protection foundations have the opportunity to play an active role in implementing the consumers' protection.
 - iii. Duties of the non-governmental consumer protection foundations shall consist of the following activities:
 - a) To spread information in order to improve public awareness of their rights and obligations and cautions in consuming or using the goods and/or services;
 - b) To give suggestions to the consumers who need their services;
 - c) To cooperate with the related agencies to implement consumers' protection;
 - d) To assist the consumers in fighting their rights, including accommodating their complaints;
 - e) To conduct joint supervision with the government and the public for the implementation of consumer's protection.
 - iv. Provisions regarding duties of nongovernmental consumer protection foundations as intended by Section 3 above shall be further regulated by Government Regulations.

There should also be further implementation of the definition of consumer protection including consumer protection online by adopting the principles of consumer protection United Nation (UN) and Organization for Economic Cooperation and Development (OECD).

- 3) Law Number 19 Year 2016 concerning Internet and Electronic Transaction (UUITE).

Meanwhile, the awareness of states to enter into cooperation to discuss the issue of Intellectual Property Rights has formally existed since the end of the 19th century. The first ever organization to handle this issue is the World Intellectual Property Organization (hereinafter referred to as “WIPO”).²¹ Indonesia has been one of 188 state members of the WIPO since 1979.²² Indonesia has ratified several international conventions in relevance with Intellectual Property Rights²³, mainly:

- 1) Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS Agreement)
- 2) Paris Convention: Protection of Industrial Property and Convention Establishing World Intellectual Property Organization (Authorized legally through Presidential Decree No. 15 Year 1997)
- 3) Law of Republic Indonesia Number 28 Year 2014 concerning Copyright (as amended from Number 19 Year 2002)

²¹ Taryana Soenandar. *Perlindungan Hak Milik Intelektual di Negara-Negara ASEAN*. (Jakarta: Sinar Grafika, 2007), pg. 7.

²² List of member states of WIPO. Web. www.wipo.int, accessed on 3 October 2017.

²³ Sudarmanto. *KI dan HKI Serta Implementasinya Bagi Indonesia*. (Jakarta: PT Elex Media Komputindo, 2012), pg. 11-12.

4) WIPO Copyrights Treaty (Authorized legally through Presidential Decree No. 19 Year 1997)

The aforementioned laws should have been able to provide adequate legal protection for consumers in conducting transactions through E-Commerce so far, the legal protection is reflected in the provisions of Copyright, UUPK and UUIITE where the rules have been set on the use of consumers' personal data. Provided the validity of an E-Commerce transactions, the use of Certification Authority (CA) also followed by the set of actions that are prohibited for businesses to market, and produce of goods and services that can be made in reference to the object in the E-Commerce transaction.

Seeing that Indonesia has the potential and prospects are quite promising for the development of E-Commerce. Various obstacles faced in the development of E-Commerce is like the limitations of infrastructure, security of transacting and especially human resources can be attempted at the same time with the development of E-Commerce organizations. Although some of the existing problems can be solved with the emergence of this UUIITE, but on consumer protection issues in E-Commerce still need to be studied more deeply, whether the UUIITE has been able to provide legal protection for consumers. Consumers' rights that are ignored by business actors need to be carefully scrutinized. In the era of globalization and free trade today, many emerging various goods or services are marketed to consumers, either through promotion, advertising, or bidding directly. If consumers are not careful in choosing the desired goods or services, they will only become the objects of exploitation from irresponsible

business actor. Unconsciously, consumers take the goods or services consumed by the consumers for granted.

Although technological competence and benefits are often required to go through a long process. However, ignoring the development of technological capabilities will lead to negative excesses in the future. Openness, proactive and preventive nature are alternatives that can be chosen in the face of the dynamics of technological development. Learning by doing is the best alternative to face the phenomenon of E-Commerce because inevitably Indonesia has become part of global E-Commerce market. Although not yet perfect, all available means and pre-facilities can be utilized while continuing to be revised in harmony with the latest developments. Since E-Commerce has been widely used in line with the increasing internet users in Indonesia. According to data from the Telecommunication Department, in 2017, estimated netter Indonesia will reach 112 million people, beating Japan in the fifth rank of the growing number of Internet users more slowly.²⁴

1.2 Formulation of Issues

Based on the background, the issues that need to be studied and discussed in this thesis are:

- i. How do the legal protection for consumers on E-Commerce activities in Indonesia?

²⁴ https://kominfo.go.id/content/detail/4286/pengguna-internet-indonesia-nomor-enam-dunia/0/sorotan_media, accessed on 5 October 2017.

- ii. How is the implementation of E-Commerce's regulation in Indonesia today?

1.3 Purposes of Thesis

In writing this thesis, the author proposes the following purpose in the formulation of the above statements of problem:

- 1) To elaborate and test purposes or reasons behind Intellectual Property Rights and Internet and Electronic Transaction as legal protection for consumers upon E-Commerce activities in Indonesia, as against piracy or fraud or even embezzlement.
- 2) To describe the limitations and scope of party autonomy in E-Commerce activities.
- 3) To know the habits of E-Commerce activities.
- 4) To know the public preference for E-Commerce activities through Intellectual Property issues.

1.4 Merits of Thesis

The author wishes to obtain two different benefits of this thesis, both theoretical and practical

- a) From Academic Point of View

The author wishes that this thesis can contribute to the development of legal studies with regards to governmental protection for consumers or business actors upon E-Commerce activities.

b) From Practical Point of View

The adoption of the legal model in this thesis aims to deliver a deeper understanding that will help law practitioners, legal researchers, and law students in relation to Intellectual Property Rights on E-Commerce activities in order to have legal certainty, stability, clarity, and predictability be better ensured regardless of the intricacy of factual circumstances.

1.5 Systematic Writing

This thesis is divided into five chapters in the order of legal issues discussed. Each chapter is separated into a number of sub-chapters.

CHAPTER I: INTRODUCTION

Contains background, problem formulation, objectives and benefits of writing, literature review, writing method, systematic writing, and title authenticity.

CHAPTER II: LITERATURE REVIEW

In this chapter, will be elaborated through the definitions of the terminology used in this study are derived from the understanding contained in books, until experts' opinions, principles and rules on Intellectual Property Rights and E-Commerce, as well as the legislation and opinions of experts.

CHAPTER III: RESEARCH METHODOLOGY

This chapter discusses the research methodology that was used to prepare this thesis and contains the type of researches, procedure of compiling materials,

analytical characteristics as well as obstacles and solution for the obstacles that were faced during the research process.

CHAPTER IV: RESEARCH RESULT AND ANALYSIS

In this chapter, will be discussed about the description of the theoretical foundations relating to the formulation of the problems contained in this study and the conceptual basis underlying this study to help answer the problems in research. In writing the theoretical basis, which based on or calculated through theory rather than experience or practice, the deductive logic method is used. This method is a method of thinking with the commencement of something general, then drawn a special conclusion.

The author will divide the discussion into three parts. The author will talk about the three subjects of Intellectual Property and E-Commerce law: jurisdiction, choice of law, and recognition and enforcement domestic judgments. Contains on, Implementation of Consumer Protection in Electronic Transactions, Forms of Consumer Losses in E Commerce, Legal efforts that can be taken by consumers in the event of loss in E-Commerce. Where all relate to the primary impact of Intellectual Property.

CHAPTER V: CONCLUSION AND SUGGESTION

If the E-Commerce system in Indonesia can be further refined (or at least tightened) then the community (generally buyers) will be more open in doing E-Commerce system. It will cause buyers to be more willing to issue the value of transactions and increase the average purchasing power through electronic

network systems. When the average purchasing power of an open market for "upstream" businesses can open up opportunities for markets outside the finished goods business.

This can be achieved but requires both sides' participation. The system must be perfected by the government and the consciousness of the buyer to limit fraudulent intentions.

