

GUARANTEE OF LEGAL PROTECTION IN CROSS-BORDER ELECTRONIC TRANSACTIONS

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ABSTRACT

In the era of globalization, cross-border electronic transactions have become a catalyst for economic growth and global connectivity. However, the legal complexity associated with consumer protection, technological disparities, and regulatory misalignment at national and international levels creates significant challenges. In Indonesia, despite having laws regulating electronic transactions, implementation faces constraints, particularly concerning legal uncertainty and a lack of consumer legal awareness. This research employs a normative legal research method, focusing on the analysis of legislation, jurisprudence, and international conventions related to cross-border electronic transactions. Legislative analysis is used to explore relevant legal aspects, conceptual approaches aid in understanding key concepts, and a comparative approach is applied to analyze legal systems and consumer protection practices. The study underscores the importance of legal reform to address regulatory misalignment, legal uncertainty, and technological disparities in Indonesia's cross-border electronic transactions. Despite the existence of consumer protection laws, further efforts are needed to enhance implementation and consumer legal awareness. The research's conclusion provides a foundation for developing holistic strategies to ensure the fair, secure, and accountable sustainability of e-commerce growth at both the national and international levels.

Keywords: Guarantees, Protection, Law, Electronic Transactions, Cross Borders.

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GARANTIA DE PROTEÇÃO JURÍDICA NAS TRANSAÇÕES ELETRÔNICAS TRANSFRONTEIRIÇAS

RESUMO

Na era da globalização, as transações eletrônicas transfronteiriças tornaram-se um catalisador para o crescimento econômico e a conectividade global. No entanto, a complexidade legal associada à proteção do consumidor, disparidades tecnológicas e desalinhamento regulatório em níveis nacionais e internacionais cria desafios significativos. Na Indonésia, apesar da existência de leis que regulam transações eletrônicas, a implementação enfrenta restrições, especialmente em relação à incerteza legal e à falta de conscientização legal do consumidor. Esta pesquisa utiliza um método de pesquisa jurídica normativa, com foco na análise de legislação, jurisprudência e convenções internacionais relacionadas a transações eletrônicas transfronteiriças. A análise legislativa é utilizada para explorar aspectos legais relevantes, abordagens conceituais auxiliam na compreensão de conceitos-chave, e uma abordagem comparativa é aplicada para analisar sistemas legais e práticas de proteção ao consumidor. O estudo destaca a importância da reforma legal para lidar com o desalinhamento regulatório, a incerteza legal e as disparidades tecnológicas nas transações eletrônicas transfronteiriças na Indonésia. Apesar da existência de leis de proteção ao consumidor, são necessários esforços adicionais para aprimorar a implementação e a conscientização legal do consumidor. A conclusão da pesquisa fornece uma base para o desenvolvimento de estratégias holísticas para garantir a sustentabilidade justa, segura e responsável do crescimento do comércio eletrônico, tanto em nível nacional quanto internacional.

Palavras-chave: Garantias, Proteção, Direito, Transações Eletrônicas, Transfronteiriços.

1 INTRODUCTION

Cross-border electronic transactions, or cross-border e-commerce, have become a primary driver in connecting the global market through electronic trading platforms. Utilizing electronic media, businesses and consumers can engage in transactions without being restricted by geographical boundaries (Tu & Shangguan, 2018; Huang & Chang, 2019). This phenomenon has presented significant opportunities for economic growth, particularly by expanding access to international markets for small and medium-sized enterprises. Sellers can easily reach consumers beyond national borders, while consumers enjoy broader access to a variety of

products and services from around the world. This not only provides a substantial boost to international trade but also creates new opportunities for innovation, cross-border business collaborations, and the enhancement of societal well-being (Saydam & Civelek, 2022). According to information from the United Nations Conference on Trade and Development (UNCTAD), the value of cross-border electronic trade reached \$26.7 trillion in 2019, equivalent to approximately 30% of the global Gross Domestic Product (GDP). Indonesia is also noted as one of the countries with significant growth in cross-border electronic transactions, reaching a rate of 21% in 2020 (Sabirin et al., 2022; Wysokińska, 2023).

Despite opening wide doors for economic growth and global market access, cross-border electronic transactions also pose various legal challenges that need to be addressed. One primary focus in dealing with these issues is consumer protection (Liu et al., 2021). Often, discrepancies between the ordered and received goods or services become a major issue that can harm consumers (Tiwari et al., 2020; Hsu et al., 2022). Additionally, the potential for fraud or identity theft adds complexity to transaction security. Other challenges include the risk of losses due to system errors or technical failures, violations of intellectual property rights, and non-compliance with quality and safety standards for products (Huang et al., 2020). Most challenging of all is determining the jurisdiction and applicable laws in resolving disputes, as these transactions involve various countries with different regulations. All of these issues pinpoint the vulnerability of consumers as the weaker party in cross-border electronic transactions (Liu et al., 2020; Tjipto, 2021).

Legal protection for consumers is an urgent and strategic imperative to be implemented by the state. This legal protection encompasses various measures aimed at providing certainty, fairness, and balance in the relationship between consumers and businesses (Barkatullah, 2018; Guo et al., 2018). Essentially, legal protection aims to mitigate the risks and vulnerabilities

faced by consumers in the increasingly complex global e-commerce ecosystem. Legal protection for consumers can manifest in two main dimensions, namely preventive and repressive (Mou et al., 2020). Preventive efforts include measures such as regulating quality and safety standards for products, monitoring business activities, and providing comprehensive education and information to consumers. These measures are designed to prevent problems or losses for consumers from arising at the outset of transactions (Ahmed, 2019). On the other hand, repressive efforts are aimed at addressing potential issues or providing compensation to consumers who have suffered harm. Through a strategic combination of preventive and repressive approaches, the state can create a fair, secure, and effective e-commerce environment for consumers on a global scale (Cui et al., 2019; Anastasiadou et al., 2019).

In Indonesia, legal protection for consumers in the context of cross-border electronic transactions has been regulated through several laws outlining the rights and obligations of businesses and consumers. Law Number 8 of 1999 on Consumer Protection is the main foundation that regulates consumer rights, including in electronic transactions. Law Number 7 of 2014 on Trade and Law Number 19 of 2016 on the Amendment to Law Number 11 of 2008 on Information and Electronic Transactions also provide a comprehensive legal framework related to electronic commerce. In addition to these regulations, the Indonesian government has issued Government Regulation Number 71 of 2019 on the Implementation of Electronic System and Transactions, which provides detailed regulations on the procedures and security of electronic transactions. Besides internal regulations, Indonesia also demonstrates its commitment to consumer protection in cross-border electronic transactions by ratifying various international legal instruments, including the United Nations Convention on Contracts for the International Sale of Goods (CISG), the United Nations Convention on the Use of Electronic

Communications in International Contracts (CUECIC), and the ASEAN Agreement on Electronic Commerce.

Legal protection for consumers in cross-border electronic transactions in Indonesia faces several challenges that contribute to suboptimal and inadequate protection. One of the primary obstacles is the inconsistency and lack of synchronization between national and international legislation (Liu & Li, 2020). The legal and technological gaps among the countries involved in these transactions further complicate efforts to achieve consistency and harmonization within the legal framework. These gaps involve differences in the interpretation and implementation of applicable legal norms, creating legal loopholes exploitable by irresponsible businesses (Voss, 2019). Another complicating factor is the limited human resources and legal infrastructure in Indonesia. Ineffectively managing and enforcing laws related to cross-border electronic transactions create opportunities for violations that can harm consumers. Additionally, the low legal awareness and skills among consumers in electronic transactions further complicate the implementation of consumer protection (Tiwari et al., 2020; Liu et al., 2020). Therefore, comprehensive efforts are needed to improve and enhance the legal protection system for consumers at the national level, including enhancing legal capacity, updating relevant regulations, and increasing legal awareness among consumers.

2 RESEARCH METHODS

This research applies the normative legal research method, an approach that explores legislation, doctrine, jurisprudence, and international conventions related to cross-border electronic transactions. The aim of the normative legal research method is to identify applicable legal principles and evaluate the suitability, fairness, and effectiveness of these legal principles. In this study, several research approaches are employed to uncover legal aspects related to

cross-border electronic transactions. The first approach is the legislative approach, involving an analysis of national and international legal rules such as Law Number 8 of 1999 concerning Consumer Protection, Law Number 7 of 2014 concerning Trade, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, as well as Government Regulation Number 71 of 2019 concerning the Organization of Electronic Systems and Transactions. The second approach is the conceptual approach, focusing on understanding legal concepts related to consumers, businesses, electronic transactions, legal protection, legal harmonization, and dispute resolution. The third approach is the comparative approach, which analyzes legal systems and consumer protection practices in cross-border electronic transactions in several countries. This research utilizes secondary data collection techniques, including relevant legal materials. There are three categories of legal materials accessed in this study. First, primary legal materials, which are the main legal sources binding parties in cross-border electronic transactions, including relevant national and international legislation. Second, secondary legal materials, providing additional information and supporting the understanding of primary legal materials, such as legal expert writings in the form of books, scholarly journals, seminar papers, theses, and dissertations. Third, tertiary legal materials, providing supporting information regarding primary and secondary legal materials, involving legal dictionaries, encyclopedias, legal directories, legal indexes, and other references.

3 RESULTS AND DISCUSSION

Legal Policy in Facing the Development of Electronic Transactions

The main framework of legislation related to e-commerce activities in Indonesia, predating the issuance of specific regulations for the e-commerce sector, centers around Law No. 11 of 2008

as amended by Law No. 19 of 2016 concerning Information and Electronic Transactions (ITE Law). Although this law provides a legal basis for addressing various aspects of electronic transactions, including e-commerce, its lack of specificity and comprehensiveness in regulating the specific characteristics of e-commerce creates a need for more detailed regulations (Koto, 2021). The law, initially designed to respond to information technology developments, is not entirely adequate in addressing the dynamics and unique issues related to e-commerce, such as consumer protection, dispute resolution, and governance aspects (Siregar et al., 2020; Syaafi et al., 2023). With the growth of the e-commerce sector, several amendments and implementing regulations initiatives from the ITE Law have been introduced. One example is the establishment of the National Cyber and Crypto Agency (NCCA/BSSN), inaugurated by the president in 2018. BSSN aims to provide electronic certificate services to a broader sector, support cybersecurity, and assist the government in addressing cybersecurity issues. Furthermore, the Minister of Communication and Informatics launched the Electronic Certificate Implementation Agency in 2019, with the goal of supporting digital transactions. Although these developments reflect positive steps in filling legal gaps, further attention and more comprehensive regulatory updates are still needed to accommodate the latest dynamics in the e-commerce ecosystem in Indonesia (Ginanjar & Lubis, 2022).

While the ITE Law has established provisions related to electronic transactions, it should be noted that the law also mandates the issuance of government regulations governing the conduct of electronic transactions both in the public and private spheres (Simbolon et al., 2021). Nevertheless, the ITE Law does not provide sufficiently detailed explanations regarding the scope of the provisions that can be regulated in these government regulations. This ambiguity creates legal uncertainty, especially in guiding law enforcement officials and judges in handling cases involving electronic transactions (Suharsono, 2018; Singgi et al., 2020). This legal

uncertainty can have a significant impact, particularly in the practice of justice, especially in deciding cases involving electronic evidence. In law enforcement, judges must make careful considerations regarding the validity and strength of electronic evidence. Without clarity regarding the scope of provisions in government regulations, judges may face difficulties in providing consistent and accurate interpretations (Lesmana et al., 2021; Sutarli & Kurniawan, 2023).

In addition to formulating ideal norms in the form of regulations that support the security of electronic transactions (e-commerce), it is essential to consider that the implementation and effectiveness of these norms also heavily depend on other legal instruments, especially human resources from law enforcement agencies (Gustina et al., 2022). In the context of handling e-commerce cases, such as fraud that harms consumers, there are tangible constraints within the police force. Not all investigators have the necessary abilities or knowledge to effectively address such cases. Limitations in human resources and knowledge in the field of technology pose serious obstacles, causing some investigators to be suboptimal in handling or investigating electronic transaction cases (Fitri, 2022; Silalahi & Dameria, 2024). Furthermore, the lack of legal support aligned with the dynamics of the IT field also hinders the handling of e-commerce cases. Apart from human resource issues, it is crucial to note that data privacy, especially in the context of consumer protection laws, is not adequately regulated at the national level (Ginanjar & Lubis, 2022). While other countries have recognized the importance of privacy as part of individual rights, Indonesia lacks sufficiently robust regulations regarding the protection of personal data in the consumer context. This creates legal uncertainty and exposes the potential for privacy violations in electronic transactions. While the UNCITRAL Model Law emphasizes the need for comprehensive support for data protection, efforts to regulate Personal Data Protection in Indonesia are still in the legislative drafting stage and have not reached

completion to date (Siregar et al., 2020). Thus, further efforts are still required to strengthen the legal framework supporting security and privacy in electronic transactions in Indonesia.

Challenges in Legal Protection

Legal protection in cross-border electronic transactions is an essential need to safeguard the rights and interests of all involved parties, especially consumers who often find themselves in a more vulnerable position. Providing a robust legal framework is a crucial step for a country to ensure that such transactions take place fairly, securely, and accountably (Saleh, 2021). However, achieving legal protection in the context of cross-border transactions is not straightforward. Significant challenges arise from the inconsistency of regulations at both the local and international levels, in terms of both substance and jurisdiction (Gustina et al., 2022; Hsu et al., 2022). The existence of local regulations that are not aligned with international norms, such as the differences between Indonesia's ITE Law and CUECIC, creates a void in rules and legal uncertainty, which can complicate the implementation and enforcement of the law. Other challenges in cross-border electronic transactions include the complexity of the differences in legal systems among the countries involved (Tjipto, 2021). Fundamental differences between civil law and common law, as well as variations in dispute resolution rules, can create confusion and difficulties in determining applicable jurisdictions (Mou et al., 2020; Liu et al., 2021).

Technological gaps between countries pose a serious challenge in the context of cross-border electronic transactions. Differences in the availability and capability of information and communication technology (ICT) infrastructure among countries can create a significant digital divide. Countries with limited access to ICT or limited expertise in its use may experience limitations in accessibility when conducting electronic transactions (Voss, 2019). This not only

causes economic disadvantages but also restricts participation and digital economic growth, resulting in a widening development gap between countries (Anastasiadou et al., 2019). Moreover, technological disparities provide opportunities for cybercrimes in cross-border transactions. Countries with less capability in cybersecurity may become easy targets for cybercriminals operating across borders. Cyber threats, such as data breaches, identity theft, and other cyberattacks, can damage the integrity and trust in electronic transactions (Suharsono, 2018; Lesmana et al., 2021).

Furthermore, significant challenges in the supervision and enforcement of electronic transactions involve limitations in human resources among businesses, consumers, and law enforcement. Businesses often face constraints in understanding and implementing secure and legal electronic transaction practices (Liu & Li, 2020). On the other hand, consumers may have limited knowledge to protect themselves from fraudulent practices or other violations in electronic transactions. Law enforcement may also experience human resource limitations, both in terms of the number of skilled personnel and the technical knowledge required to investigate and handle electronic transaction violations (Koto, 2021; Sutarli & Kurniawan, 2023). Not only human resources but also legal infrastructure, such as infrastructure and legal institutions, can be limited in the context of electronic transactions. The infrastructure supporting the supervision and enforcement of electronic transactions needs improvement to provide an effective framework. Legal institutions also need to have adequate capacity to face the evolving challenges in the digital world (Fitri, 2022; Syaufi et al., 2023).

The low legal awareness and skills of consumers pose a serious challenge in the context of cross-border electronic transactions. Lack of understanding of legal aspects related to cross-border transactions can make consumers vulnerable to fraud, consumer rights violations, or misunderstandings of applicable rules (Cui et al., 2019). Low legal awareness can result in

consumers not understanding their rights and responsibilities, making them unable to protect themselves effectively. This lack of knowledge can also impact dispute resolution, where consumers may not have adequate understanding of how to engage in the legal process (Ahmed, 2019; Huang et al., 2020). Consumer skills in electronic transactions are also a key factor. The ability to choose suitable products or services, understand transaction terms and conditions, and resolve conflicts if they arise is crucial. Lack of these skills can lead to unwise decisions, confusion in the transaction process, or even conflicts that are difficult to resolve (Huang & Chang, 2019; Saydam & Civelek, 2022; Ginanjar & Lubis, 2022).

4 CONCLUSIONS

This research underscores the need for robust legal protection in addressing the dynamics of cross-border electronic transactions. While the potential for economic growth and global connectivity through e-commerce is significant, the challenges faced are quite complex. The misalignment of regulations at the national and international levels creates confusion and legal uncertainty that can hinder the implementation and enforcement of rules. The focus on consumer protection in Indonesian law is a positive step, but implementation challenges and the lack of human and legal resources highlight the need for further reforms. Additionally, the technology gap between countries not only creates inequality in accessibility in electronic transactions but also increases the risk of cybercrime. The conclusion of this research emphasizes the necessity for comprehensive efforts, including detailed legal updates, increased human resource capacity, and enhanced consumer legal awareness. The foundation of these conclusions can serve as a basis for the government, businesses, and other stakeholders to develop effective and holistic strategies to ensure that cross-border electronic transactions proceed fairly, safely, and responsibly for all involved parties. This foundation is crucial for



mitigating the risks and vulnerabilities that may arise within the increasingly complex ecosystem of electronic commerce.

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