

# Rechtsidee

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## Table Of Content

<b>Journal Cover</b>	2
<b>Author[s] Statement</b>	3
<b>Editorial Team</b>	4
<b>Article information</b>	5
Check this article update (crossmark)	5
Check this article impact	5
Cite this article	5
<b>Title page</b>	6
Article Title	6
Author information	6
Abstract	6
<b>Article content</b>	7

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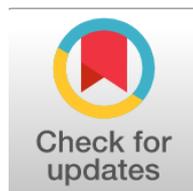
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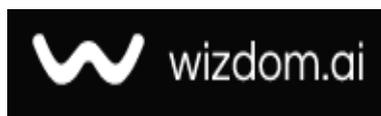
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# **E-Commerce Road Map as a Legal Protection for Consumers in The Digital Economic Era**

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## **Abstract**

Digitalization of the economic field to welcome the era of industrial revolution 4.0 needs to be addressed intelligently so it is not harm the consumers and business actors through the transformation of consumer protection instruments into a more contemporary way. Currently, Indonesia has about 93.4 million Internet users and approximately 71 million users of smart phones which makes the internet and of course online transactions, as part of a lifestyle that is reflected through shopping behavior. The task of the State is to bring legal protection to consumers. Based on the consideration of actuality and urgency, to create the necessary level of certainty in business transactions and protect the consumer rights of e-commerce transactions the Government finally issued Presidential Regulation No. 74 of 2017. This regulation regulates the Electronic Road Based Electronic System Road Map (road map e-commerce). The Policy Package is intended to make Indonesia the largest digital economy in Southeast Asia by 2020. Legal umbrella is required in the form of law so that the state can provide a simultaneous and comprehensive legal protection of consumer rights in e-commerce transactions in the era of digital economy.

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## Introduction

The history of mankind cannot be separated from the history of the development of equipment, especially the development of technological equipment. Technology of information has changed the ways of transacting and opening up new opportunities in conducting business transactions. The development of technology of information has caused the world to become borderless and cause significant social changes to take place so quickly. Technology of information is currently a double-edged sword, because in addition to contributing to the improvement of welfare, progress and human civilization, it is also an effective means of acting against the law.<sup>2</sup> In a period of increasingly integrated globalization (*Global Communication Network*) and the increasing popularity of the internet as if making the world smaller, the development of technology and information in Indonesia also makes conventional buying and selling transactions increasingly turning into electronic buying and selling transactions that are popular with e-commerce or electronic trading contract.

David Baum,<sup>3</sup> stated that "*e-commerce is a dynamic sets of technologies, application, and bussines procces that link enterprises, consumers and communities through electronic transaction and the electronic exchange of goods, services and information*" that e-commerce is a dynamic set of technologies, applications, and business activities that connect companies, consumers, and communities through electronic transactions and trade in goods, services and information. In e-commerce transactions, more practical business transactions are created without paper and parties can meet indirectly in conducting e-commerce transactions, so that it can be said that e-commerce becomes a new economic driver in the field of technology. In addition to these benefits, the negative aspects of this development are related to security issues in transactions using e-commerce media. At present there are many forms of fraud that tend to harm consumers and cause various legal problems in conducting e-commerce transactions.<sup>4</sup>

E-Commerce does provide extraordinary indulgence to consumers, because consumers do not need to leave home to shop, besides that the choice of goods / services varies with relatively cheaper prices. Consumers have a lot of freedom to determine the type and quality of goods / services according to their needs. It is said

<sup>2</sup> Ahmad M. Ramli, *Cyber Law Dan HAKI Dalam Sistem Hukum Indonesia* Bandung: Refika Aditama, 2004. pg 1.

<sup>3</sup> Onno W. Purbo dan Aang Wahyudi, *Mengenal E-Commerce*, Jakarta :PT Elex Media Komputindo, 2000 , pg. 2

<sup>4</sup> Atip. Latifulhayat, "*Perlindungan Data Pribadi Dalam Perdagangan Secara Elektronik (E- Commerce)*," *Jurnal Hukum Bisnis* Vol. 18, no. Maret (2002).

to be negative because these easy conditions can cause the consumer's position to be weaker than the position of the business actor.<sup>5</sup>

In the future it is hoped that the world will become a global village, so that national borders become unlimited. While the global economy follows its own logic. In this process, the world is utilized and there is an intensification of awareness of the world as a whole. However, the process of globalization which allows for the free flow of information through the internet, the increase in traffic of goods and people internationally as well as membership in various world organizations potentially raises problems.<sup>6</sup>

The concept of digital economy was first introduced by Don Tapscott (*The Digital Economy*, 1995), namely a sociopolitical and economic system that has characteristics as an intelligence space, including information, various instrument access, capacity, and information processing. Digital economic components that were first identified were the technology, information and communication (ICT) industry, e-commerce activities, and digital distribution of goods and services.<sup>7</sup>

The ease of transactions in the online network will provide convenience and provide consumer benefits because it can be accessed up to across countries and gives consumers choices. But on the other hand there will be an expansion of information asymmetry between consumers and producers so that it can have a negative impact on consumers. The government must protect consumer rights so that consumers always feel safe and benefit in transacting electronically and still encourage consumers to prioritize the use of domestically-made products.

## Problem Formulation

From the explanation above, the authors are interested in analyzing the problem regarding "How is the state's efforts to provide legal protection to consumers in e-commerce transactions on e-Commerce road maps to support the growth of the digital economy in Indonesia?".

## Discussion

# Rechtsidee

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The consumer protection movement exists because of the many problems resulting from the position of society (consumers) and the aggressiveness of

<sup>5</sup> Happy, Susanto, *Hak-hak Konsumen Jika dirugikan*, Yogyakarta: Visi Media, 2008 ,pg 3.

<sup>6</sup> Jurnal Hukum dan Peradilan, Volume 6 Nomor 1, Maret 2017 : 1 - 24

<sup>7</sup> "Peluang dan Tantangan Ekonomi Digital di Indonesia", [or.id/tantangan-ekonomi-digital-indonesia/](http://or.id/tantangan-ekonomi-digital-indonesia/), Accessed on Wednesday 25 July 2018 on 19.40 WIB

producers (corporations) in carrying out their activities and offering their products, regardless of quality, ethics and corporate responsibility which often only benefits themselves and causes losses on the part of consumers , which is sometimes not only material loss, physical defects but also concerning the human soul.<sup>8</sup>

Google and Temasek have recently conducted research and said that the digital economy in Indonesia has increased the most in two sectors, e-travel and e-commerce. The transaction valuation in Indonesia in 2025 is expected to reach US \$ 81 billion (approximately 900 trillion). E-commerce is expected to grow 39 percent per year, growing from 1.7 billion US dollars in 2015 to 46 billion US dollars in 2025. Meanwhile for e-travel can grow to 17 percent per year from 5 billion US dollars in 2015 to 24 , 5 billion US dollars in 2025. In 2015 the velocity of money in this sector is estimated to reach US \$ 3.5 trillion or 4 percent of world growth. The huge potential of Indonesia's digital development has made Amazon interested in investing capital of US \$ 600 million or around 7.8 trillion, after the largest online from China, Alibaba has also entered the Indonesian market by buying Lazada shares worth US \$ 1 billion.<sup>9</sup>

The development of e-commerce transactions is inseparable from the rate of growth of the internet because e-commerce is possible through the internet. The rapid growth of internet users is a fact that makes the internet an effective medium for businesses to introduce and sell goods or services to prospective consumers throughout the world. E-commerce is a modern business model that does not bring business people physically and does not use genuine signatures. The presence of e-commerce enables the creation of healthy competition between small, medium and large businesses in seizing market sales.<sup>10</sup>

In e-commerce transactions, business transactions that are very practical without paper (paperless) that have been created and sellers and buyers can not meet face to face in conducting transactions, so that it can be said that e-commerce becomes a new economic driver in the field of technology . In addition to the benefits, of course there are negative aspects of this development that are related to security issues in transactions using e-commerce media. Many forms of fraud appear that tend to harm consumers and cause various legal problems in conducting e-commerce transactions.<sup>11</sup> Similar to the general sale and purchase contract, the online sale and purchase contract also consists of offers and receipts because an agreement

<sup>8</sup> Zumrotin, *Pentingnya Keikutsertaan masyarakat Dalam Perlindungan Konsumen*, Akademika, UMS, No.01 Th XIII,1995, pg. 10.

<sup>9</sup> Accessed on Monday 23 July 2018 on

23.15 WIB.

<sup>10</sup> Farizal F. Kamal, *Cyber Business*, cet. 3. Jakarta: Elex Media Komputindo, 1991, pg. 1.

<sup>11</sup> Atip. Latifulhayat, "Perlindungan Data Pribadi Dalam Perdagangan Secara Elektronik (E-

Commerce)," *Jurnal Hukum Bisnis* Vol. 18, no. Maret (2002).

will always begin with an offer by one party and acceptance by the other party.<sup>12</sup> Because of the need for legal instruments that can be applied, either in the form of laws, new regulations or legal rules that are tailored to the needs of this media.<sup>13</sup>

One of the agencies responsible for protecting consumers is the Ministry of Trade through the Directorate General of Consumer Protection and Trade Order (PKTN) which has made various efforts to protect consumers through empowering consumers. Empowerment is intended to realize intelligent consumers who will be seen from the Consumer Empowerment Index (IKK). This index is a perspective of consumer awareness, understanding, and ability which is measured through three stages of purchasing decisions, namely before purchase, at the time of purchase, and after purchase. Because the characteristics of Indonesian consumers today are still choosing and focusing on cheap products and imported products and have not been fully brave and aware to ask for their rights as consumers. This can be seen from the still low value of the new IKK reaching 33.70 in 2017 from a scale of 100.<sup>14</sup>

The creation of technology by humans does not always produce positive results but can also have a variety of negative impacts. Here it can be seen that one of the important regulations in the field of information technology is

to be able to provide legal protection for consumers in e-commerce transactions. Legal protection for consumers must be carried out by the state in accordance with the UN General Assembly Resolution. In Indonesia, the significance of the regulation of consumer rights through legislation is part of the implementation as a welfare state, because the 1945 Constitution as well as a political constitution can also be called an economic constitution, namely a constitution that contains the idea of a welfare state that develops because influence of socialism since the nineteenth century.<sup>15</sup>

The government has tried preventively and repressively to improve consumer protection. As a preventive effort so that consumers get detailed information about consumer protection so they can know and understand their rights and obligations before deciding to buy goods / services.

The e-Commerce roadmap is expected to be able to encourage the creation, innovation and invention of new economic activities among the younger generation. The government targets Indonesia to have 1,000 technopreneur in 2019. For this reason, this e-Commerce roadmap policy will prioritize and protect national interests,

<sup>12</sup> Edmon Makarim, *Kompilasi Hukum Telematika* Jakarta: PT Raja Grafindo Persada, 2003, pg. 375. <sup>13</sup> Asrit Sitompul, *Hukum Internet Pengenalan Masalah Hukum Di Cyberspace*, Bandung: PT. Citra Aditya Bakti, 2001, pg. 2.

<sup>14</sup> <https://www.commerce.go.id/berita>

<sup>15</sup> Jimly Asshiddiqie, *Undang-Undang Dasar 1945: Konstitusi Negara Kesejahteraan Dan Realitas Masa Depan*, Pidato Pengukuhan Jabatan Guru Besar Tetap Madya (Jakarta, 1998). Pg. 1-2

especially SMEs and startup or startup businesses. The 8 important aspects that will be regulated in the Perpres of e-Commerce Roadmap include:

1. KUR funding for platform developers, grants for companion business incubators, startups, USO funds for digital MSMEs and e-commerce startup platforms, angel capital, seed capital, crowdfunding, and opening a negative investment list (DNI).
2. Taxation in the form of tax deductions for local investors who invest in startups, simplifying permits or procedures for startups with income below Rp. 4.8 billion per year, and the equality of tax treatment for e-Commerce entrepreneurs.
3. Consumer protection through government regulations regarding trade transactions through electronic systems, regulatory harmony, and payment systems through e-Commerce, as well as the development of national payment gateways in stages.
4. Education and HR through e-Commerce awareness campaigns, national incubator programs, e-Commerce curriculum, and e-Commerce education for consumer actors and law enforcement.
5. Logistics through compliance with the national logistics system, strengthening local and national couriers, developing MSME data transfer, developing logistics from village to city.
6. Communication infrastructure through the construction of broadband networks.
7. Cyber security, with the preparation of a national supervision system model in e-Commerce transactions, public awareness about cyberspace, preparation of SOPs related to consumer data storage, and security certification of consumer data.
8. Establishment of implementation management by monitoring and evaluating the implementation of e-Commerce road maps.<sup>16</sup>

The e-Commerce roadmap is considered very important for the e-Commerce industry in Indonesia, because the government targets the business value of e-Commerce transactions to reach US \$ 130 billion or equivalent to Rp 1,710.5 trillion in 2020. In the E-Commerce roadmap 2017- 2019 so that consumers are protected, the government regulates trade transactions through electronic systems and provides education for the entire ecosystem of electronic-based commerce, namely by regulating trade transactions through electronic systems, developing payment gateways and building consumer trust.<sup>17</sup>

The rights in the UUPK are the elaboration of Articles characterized by a welfare state, namely Article 27 paragraph (2) which reads: "Every citizen has the right to work

<sup>16</sup> [setkab.go.id/wp-content/uploads/2017/08/Perpres-Nomor-74-Tahun-2017.pdf](http://setkab.go.id/wp-content/uploads/2017/08/Perpres-Nomor-74-Tahun-2017.pdf) Accessed on Monday, 6 August 2018 on 18.45 WIB.

<sup>17</sup> Accessed on Monday, 23 July 2018 on 22.30 WIB

and livelihood that is appropriate for humanity" and Article 33 of the 1945 Constitution<sup>18</sup>, namely:

"(1) The economy is structured as a joint effort based on the principle of kinship; (2) Production branches which are important to the state and which control the livelihood of the public are controlled by the state; (3) The earth and water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. laws that affect the community, which inevitably must be handled by legal experts. Various problems

# Rechtsidee

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that arise as a result of information technology and must be faced by law should have been quite clear and predictable.

Article 4 UUPK stipulates 9 (nine) consumer rights in Indonesia, namely:

1. The right to comfort, security and safety in consuming goods and / or services;
2. The right to choose goods and / or services and obtain goods and / or services in accordance with the exchange rate and conditions and guarantees promised;
3. Right to information that is correct, clear and honest regarding the condition and guarantee of goods and / or services;
4. The right to be heard opinions and complaints about the goods and / or services used;
5. The right to obtain appropriate consumer protection advocacy;
6. Right to get consumer guidance and education;
7. The right to be treated or served correctly and honestly and not discriminatory;
8. The right to obtain compensation, damages and / or reimbursement, if the goods and / or services received are not in accordance with the agreement or not as appropriate;
9. Rights stipulated in the provisions of other laws and regulations.<sup>19</sup>

With the presence of Presidential Regulation (Perpres) Number 74 of 2017 concerning Roadmap for Electronic-Based National Trade System, e-commerce road map is proof of the government's seriousness in making regulation of the digital economy will be able to stimulate this sector to grow and develop according to expectations. Without clear rules of the game, digital economy will create concern for conventional industries that have long been in the cross.

But in reality there are still five factors that influence the weak protection of consumers, the first is the still weak regulation that protects consumers due to the absence of the Law on e-Commerce, the second is the lack of good faith from e-commerce producers and application providers in transactions, the third is the unprotected consumer personal data, the fourth is that there are many standard agreements that are inserted by providers that are difficult to understand and harm

<sup>18</sup> Undang-undang Dasar Republik Indonesia 1945

<sup>19</sup> Undang-Undang Republik Indonesia No 8 tahun 1999 tentang Perlindungan Konsumen

consumers, the fifth is the aspect of empowerment and consumer literacy that is still at a low level. With a score of 34.17 the empowerment of consumers in Indonesia is only at the level of "understanding". The score indicates that Indonesian consumers have not dared to make complaints / complaints.<sup>20</sup>

The Indonesian Consumers Foundation (YLKI) urges the government to do five things. 1. Reviewing the standard agreements that exist in electronic transactions of all operators. Articles that harm consumers must be canceled; 2. Encouraging online consumer dispute resolution; 3. Encourage and accelerate the birth of the Personal Data Protection and Privacy Act; 4. Encouraging the Ministry of Trade to speed up RPP review of Electronic Expenditures; 5. Educating and empowering consumers.<sup>21</sup>

State legal protection for consumers who have weak bargaining positions is very urgent. In trade transactions on the internet where the relationship between business actors and consumers is getting closer and more open, state interference, inter-state cooperation and international cooperation are needed, namely to regulate the pattern of relations between business actors, consumers and legal protection systems for consumers.<sup>22</sup>

Without protection and legal certainty for consumers, Indonesia will only become an arena for the sale of quality goods and services, which is more worrying, even the people's welfare that is aspired becomes more difficult to realize.<sup>23</sup> Therefore, it is expected that the e-Commerce roadmap can become one of the legal efforts to protect consumers in the digital economic era so that it can realize Indonesia as the largest economic digital country in Southeast Asia by 2020.

## Conclusion

The government is expected to issue a more holistic and comprehensive legal umbrella. The e-Commerce roadmap issued by the government also needs to be made a law that regulates strong and certain. The roadmap is not only in the form of a Presidential Regulation on e-commerce, but is encouraged by making more detailed Laws on Digital Economy. The legal umbrella in the form of an Act becomes very important so that Indonesia can also prepare devices, connectivity and human resources that are still low. The authority to improve infrastructure to improve adequate internet networks is the responsibility of the government. Communication

<sup>20</sup> Accessed on Monday, 23 July 2018 on 21.40 WIB

<sup>21</sup> m Accessed on Monday, 23 July 2018 on 22.45 WIB.

<sup>22</sup> Sudaryatmo, *Hukum Dan Advokasi Konsumen*, Bandung: PT. Citra Aditya Bakti, 2001, pg. 84 .

infrastructure is a top priority that the government must immediately prepare. Without adequate internet infrastructure and human resources, Indonesia's dream of becoming the biggest digital economy country would be difficult to expect.

With the existence of the e-Commerce Law as a legal umbrella, it is hoped that the attractiveness of investment in the digital economy will be more secure. So that investors are more calm in investing, because the legal umbrella in the Presidential Regulation is very vulnerable to changes in political leadership that change every 5 years. Adequate and strong regulations will be able to make a larger, more prospective and sustainable plan, so that Indonesia will be ready to face the digital economic era.

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