



THE IMPORTANCE OF TRUSTWORTHINESS CERTIFICATION IN
RELATION TO CONSUMER PROTECTION IN ELECTRONIC
TRANSACTIONS UNDER INDONESIAN LAW

BY

THEODORA TAMARA HOSANNA

AN INDEPENDENT STUDY SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF LAWS IN BUSINESS LAWS (ENGLISH PROGRAM)
FACULTY OF LAW
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ACADEMIC YEAR 2018
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LAW FACULTY

INDEPENDENT STUDY

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ENTITLED

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PROTECTION IN ELECTRONIC TRANSACTIONS UNDER INDONESIAN LAW

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ABSTRACT

The rapidity of technology development helps people to live their life more comfortable. Commercial transactions conducted electronically on the internet or which usually called e-commerce is one of the examples of technology development. It serves people to do their things anywhere and anytime since its technology is borderless. United Nations sets the Sustainable Development Goals (SDGs) to be accomplished by all nations. One of the goals that can be achieved by the purpose of this paper is to ensure sustainable consumption and production patterns. Obtaining the sustainable practices of e-commerce transaction will help the economic growth of the country. Therefore this paper also helps to promote sustainable development in the aspect of economic growth. The protection for people who do e-commerce transaction in Indonesia is regulated under Law of Republic Indonesia Number 8 Year 1999 concerning Consumer Protection and Law of Republic Indonesia Number 16 Year 2016 concerning Electronic Information and Transaction Act. It has been 19 years since the last time that Consumer Protection Law was made; thus, the contained regulations are obsolete to be used in the e-commerce transaction. Even though Electronic Information and Transaction Act is made to achieve the

purpose of consumer protection under e-commerce transaction, its regulation still does not give enough protection to the consumer. This study will use the methodology of documentary research which is a study based on documents and current existing laws which apply to some particular problems. Under Government Regulation of Republic Indonesia Number 82 Year 2012 concerning the Implementation of Electronic Systems and Transactions, trustworthiness certification has the purpose of protecting the consumer in electronic transactions. On the other hand, trustworthiness certification is not a requirement for business actors who conduct electronic transactions.

As of 2019, no country requires trustworthiness certification to be put on the website, therefore, this research points the importance of this certification because consumer needs to have the trust to do the transaction electronically.

Keywords: trustworthiness certification, consumer protection, e-commerce, electronic transaction, data privacy

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Author will not be able to finish the thesis without the guidance, help, and support along with the prayers from many people around who give inspiration to the author. If there is a deficiency within this thesis, author openly accepts any kinds of critics and suggestion that will be useful for the quality improvement of the author in the future. Hopefully with the information of this thesis can be beneficial to many people.

Miss Theodora Tamara Hosanna

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CHAPTER 1

INTRODUCTION

1.1 Background

The increasing of the transparent world becomes the character of this current era of globalization. Relationships among countries occur naturally without any more restrictions between countries, making the world develops to be borderless. The borderless world seems to be brought by the advanced growth of communication technology. Effects of the development of technology information and globalization that occur in almost all areas of life make the world more civilized every day. Such referred technology was established to develop along with the necessity of people to make life better than before.

Based on the technology that develops rapidly nowadays, the internet holds an important part to support daily life as a media technology and information. At first, the internet was only utilized as the media to communicate and space to gain variant kind of information amongst the public. As time goes by, information and communication technologies keep developing. The use of the internet has altered to a business tool or potentially huge market and major demand by the public resulting in the transformation of people's behavior and lifestyle. By the appearance of the internet that becomes one of the most important parts of our life, many things can be done through internet. The usage of the internet not only makes our life easier but also saves a lot of time. Today the internet serves a different kind of purposes depending on the demand. According to the survey of internet traffic, top 10 uses of the internet are communication, research, education, financial transaction, real-time updates, leisure, online booking, job search, blogging, and shopping.¹

¹ Top 10 List, 'Top 10 Uses of Internet' <<http://top-10-list.org/2013/06/22/top-10-uses-of-internet>> accessed 1 September 2018

Since former times ago people have been shopped to either fulfill their needs or just simply satisfy themselves by buying the things they want. By now, technology has made the shopping experience more accessible and more comfortable. People can shop by only staying home through their computers or smartphone. Therefore, in Indonesia buy and sell products that previously was conducted conventionally slowly changing to buy and sell products electronically through the internet known as electronic commerce (e-commerce). It has been an interesting phenomenon which limited only to a group of the minority in Indonesia who are familiar with the technology. However, over time, people start to be familiar and more people do the e-commerce transaction. In this state, consumers can understand e-commerce as the activities of products and services trade transactions through the internet that serves convenience in the event of electronic transactions. E-commerce was born from the demand of people for fast, easy, and practical services.² Through the internet, people have a broader scope to choose products (products and services) that will be used with various quality and quantity as desired.³

Didik J. Rachbini states that information technology and electronic media are deemed to be the symbol of the first to lead that will unify the whole system of the world either in terms of social-cultural, economic, or financial.⁴ From the scale of local and national small operations to the big ones, the globalization progress in the recent years shifts quite fast towards a global network. Moreover, the globalization caused the flow of free trade products and services that are crossing over the boundaries of countries, which are sustained by the advanced telecommunications and information technology, have extended its area.⁵ Thus, from the perspective of the future world will turn to be a large village causing the borders of each country to

² Dikdik M. Arief Mansur and Elisatris Gultom, *Cyber Law: Legal Aspect of Information Technology* (2nd edn, PT Refika Aditama 2009) 144

³ Ibid

⁴ Didik J. Rachbini, *Myth and Implication of Globalization: Notes of Economic and Financial Site* (Yayasan Obor 2001) 3

⁵ Ibid

fade away. E-commerce has changed the way consumers to obtain the desired products. Consumer has ability to gather and compare the information such as products and services more freely without being limited to regional boundaries. There are several features, which distinguish electronic commerce from business conducted by traditional means. In particular: electronic commerce establishes a global marketplace, where traditional geographic boundaries are not only ignored; they are entirely irrelevant.⁶

Indonesia ranks as the fifth all internet users in the world with the growth of 7% every year.⁷ By the fact of holding the population of the 4th largest in the world, it is a great prospect for business actors who can benefit by taking the chances to trade or conduct online transactions. According to Nielsen survey data, more than half of the percentage of internet users do online shopping. In addition to the things users do through the internet, online shopping is not the only thing that is done through the internet, but financial transaction and online booking as well. Therefore, the potential for online trade through the internet is great indeed.

Under electronic transactions, business becomes more practical. It is paperless and can be done without a conventional way, which is meeting in person (face to face) among the parties of the transaction. Now electronic transactions can be concluded that it has become a driver of the new economy business in the area of technology. Along with the advantages, there will have disadvantages come. The negative features of this technology development concerning security matters and other kinds of fraud are possible to damage consumers in electronic transactions.⁸ Durga Surekha states, relating in this context, that “Globalization and liberalization of trade and business have resulted in many products and services being available to the consumers. Growth in the economy has increased the purchasing power of the middle-

⁶ Michel Pattison, ‘Legal Implications of Doing Business on the Internet, Information Management & Computer Security 5/1’ (1997) 29

⁷ Miniwatts Marketing Group, ‘Internet World Stats’
<<https://www.internetworldstats.com/top20.htm>> accessed 3 September 2018

⁸ Atif Latifulhayat, ‘Protection of Personal Data in Trading Electronically (E-commerce)’ [2002] 24

class section, which is the largest segment of the population. This has necessitated giving high priority to the protection of the consumers and promotion of responsible consumer movement in the country.”⁹

Relating to the development of information and communication technology in which consumers are able to trade the products and/or services passing the boundaries of countries, consumer protection will always be a crucial matter to be noticed. This issue has become a global problem for every consumer around the world. A huge factor in the success of electronic transactions is consumer protection. It is because the consumer is a notable party to decide the survival of the electronic markets in the era of globalization.

Under Indonesia law, it has been enacted the Law of Republic Indonesia No. 8 Year 1999 concerning Consumer Protection (hereinafter referred to CPL) and Law of Republic Indonesia No. 16 Year 2016 concerning Electronic Information and Transaction Act (hereinafter referred to EITA). The CPL set the regulations of rights and obligations to both sellers and consumers, while EITA sets some regulations that relate to any things that are done on the internet. Therefore electronic transactions use both of these laws since the transactions happen on the internet.

Any transactions that are conducted, either in a conventional way and electronically, need good faith from involved parties especially the trust of the consumer. The conventional way of transactions seems more trustworthy than the electronic way because consumer and seller can meet in person. Doing the transaction electronically also has more risks than the conventional way. Shopee is one of the biggest platforms of the e-commerce market in Indonesia. By this platform, a consumer who would like to do transaction gets more security by paying through the bank account of Shopee instead to the seller directly. Seller will get the payment as soon as they input the tracking code of the good that has been sent and the consumer accepts it without any complaint. But even the system that is considered as trusted still can damage the consumer. The latest case of it is, one of the Shopee’s consumer

⁹ Durga Surekha, *Consumers Awareness about Rights and Grievance Redressal* (2010) 19

reported that after she bought a phone through Shopee, her account got hacked and she did not receive any package. While in her account shows that the package has received and the money would be transferred to the seller.

The recognition of electronic transactions and electronic documents make e-commerce activities, at least, have a legal basis and provide protection to consumers who conduct e-commerce transaction. Article 1 (1) of Consumer Protection Law states that consumers' protection shall be every effort made to guarantee legal certainty aimed at providing protection to the consumers. And as it has mentioned before that to conduct electronic transaction consumer should trust the seller. Under EITA Article 10 (1), any business actor who conducts Electronic Transactions can be certified by Trustworthiness Certification Bodies. The purpose of trustworthiness certification is to give the protection to consumers under the electronic transaction¹⁰, on the contrary, the regulation does not make it as the requirement.

According to the explanations as mentioned above in connection with the legal protection of the consumer in electronic transactions, the main focus of this paper is to discuss the importance of making Trustworthiness Certification as a requirement for business actors to conduct electronic transactions.

1.2 Objectives of the Study

- To examine and identify the problems of consumer protection arise regarding to electronic transactions.
- To discover of the foreign law regulations regarding to the application and enforcement of trust services.
- To learn on what is the function of Trustworthiness Certification regarding to consumer protection under electronic transactions.

¹⁰ Government Regulation of Republic Indonesia Number 82 Year 2012 Article 67 (1)

- To suggest the appropriate amendment of EITA Article 10(1) that states, “Any business actor who conducts electronic transactions may be certified by trustworthiness certification bodies.”

1.3 Scope of the Study

- The current situation of Indonesia legal principal on consumer protection under electronic transactions.
- The regulations of foreign law regarding to the consumer protection under electronic transactions.

1.4 Hypothesis

The regulations of consumer protection under Indonesia jurisdiction are lack of requirements to conduct the electronic transaction; therefore Indonesia law remains inadequate in the context of creating consumers’ confidence. Since Trustworthiness Certification under EITA Article 10(1) which states “Any business actor who conducts electronic transactions may be certified by trustworthiness certification bodies” is not compulsory, it shall be amended to create consumers’ confidence.

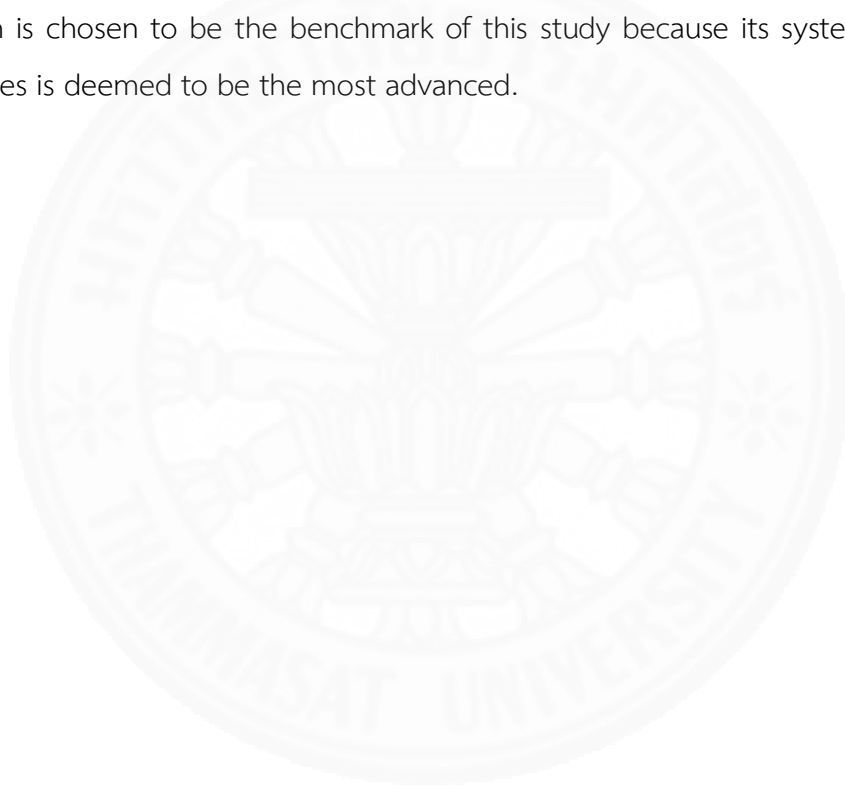
1.5 Expected Outcome

To understand the problems of consumer protection arise regarding electronic transactions and to find out about foreign law regulations regarding the application and enforcement of trust services along with the function of Trustworthiness Certification regarding consumer protection under electronic transactions. After discovering those things, Article 10 (1) EITA shall be amended to make the Trustworthiness Certification as requirement followed by the legal enforcement in accordance to maximize consumer protection who do electronic transactions to achieve the desired effect.

1.6 Research Methodology

The methodology that will be used in this paper is documentary research. It is a study based on the papers, documents, and current legal regulations. Related regulations used in this paper are law under Indonesia and European Union jurisdictions along with UNCITRAL Model Law on E-Commerce (1996).

Another research methodology used in this paper is model law. European Union is chosen to be the benchmark of this study because its system of the trust services is deemed to be the most advanced.



CHAPTER 2

GENERAL CONCEPT CONCERNING TRUSTWORTHINESS CERTIFICATION TOWARDS CONSUMER PROTECTION

Trust and trustworthiness appear to be connected between one another: whether we trust somebody/something this person/subject has to be trustworthy.¹¹ Three elements which form trustworthiness that make a party reliable are ability, goodwill, and integrity.¹² Trust is a prominent characteristic of the relationship between friend and families; it mitigates connection among individuals causes their relationship better; thus it is crucial for the well-posed of society. When it has trust, it always has a risk. It is one of the component of trust, an essential element of community well-being.

Although scientific studies provide various features of online trust, mostly online trust studies are only concentrated in the field of e-commerce, and it is studied as the connection between consumer and the website owner. Online trust is defined by quoting Mayer and Davis of trust definition to the e-commerce environment. They describe it as “CTIS (consumer trust in internet shopping) is the willingness of a consumer to be vulnerable to the actions of an internet merchant in an Internet shopping transaction, based on the expectation that the Internet merchant will behave in certain agreeable ways, irrespective of the ability of the consumer to monitor or control the Internet merchant.”¹³

2.1 Definition of Trustworthiness Certification

Trustworthiness certification or to be known as trustmark is a badge, image or logo found on the website that shows the site has qualified the required terms of

¹¹ Elena Chernovich, ‘Trust in E-Commerce: the Moral Agency of Trustmarks’ [2012] 10

¹² Ibid

¹³ Ibid 12

security guarantee. It is used to indicate the approval branding of an accredited trustmarks company. By putting the trustmarks consumer recognizes that the website has passed some tests of security and privacy matters; thus the site is a member of the credible organization. When the displayed trustmarks is from a reliable and well-known company, it boosts the consumer's confidence to conduct the business with the particular website.¹⁴ Based on EITA Article 10(2), trustworthiness certification is meant as proof that business actors who conduct electronic trade are eligible to do business upon assessment and audits by authorized bodies¹⁵. After trustworthiness certification is obtained, a logo of trustworthiness certification shall be put on the website of the business actor.

2.2 Background of Electronic Transactions

Electronic transactions are the act of buying or selling something or sending money electronically, especially over the internet.¹⁶ While according to EITA, electronic transaction means a legal act that is committed by the use of computers, computer networks, and/or other electronic media.¹⁷ In the practice of utilization of technology through the electronic transaction, it has broad and global systems so that people can easily access at any time without any physical contact between consumers and business actors. Internet culture as a sign of the world's progress is so dazzling to the people, it has offered economic, financial, staff, and other benefits in the development

¹⁴ Vangie Beal, 'E-Commerce Trustmark'

<https://www.webopedia.com/TERM/E/e_commerce_trustmark.html> accessed 25 October 2018

¹⁵ Trustworthiness certification body is operated by an independent institution which is established by recognized and authorized professionals who are monitored by the government. The body is authorized to audit and issue trustworthiness certificates for Electronic Transactions

¹⁶ Cambridge Dictionary <<https://dictionary.cambridge.org/dictionary/english/electronic-transaction>> accessed 30 Nov 2018

¹⁷ Electronic Information and Transaction Act 2016 (EITA), art 1(2)

of the world of communication and information, both domestically and internationally.¹⁸

2.2.1 E-Commerce as the Form of Global Trade Transactions

Although the title of this research mention electronic transactions, it will specify that the focus will be on electronic commerce. There is no agreed definition regarding e-commerce; however, from various interpretations, some elements of e-commerce tend to be agreed upon. According to Kamlesh K. Bajaj and Debjani Nag, e-commerce is the paperless exchange of business information but through EDI (Electronic Data Exchange), e-mail, EBB (Electronic Bulletin Board), electronic fund transfer and other kinds of technologies which use the internet.¹⁹

Relating to that definition, Bajaj and Debjani explain their opinion by referring to the description made by UNCITRAL which states briefly that e-commerce is defined as every trading activity carried out by exchanging information provided, received or stored through electronic, optical or other similar tools including, but not limited to EDI, e-mail, telegram, telex or telecopy.²⁰ While Julian Ding defined e-commerce as a commercial transaction that is conducted between seller and buyer or with another party in the same agreement relationship to send the number of products, services, or transfer of rights. This commercial transaction is contained in electronic media which physically does not require the presence of parties and medium exist in a public network or system as opposed to the private network. The public network system must consider an open system.²¹ Thus it can be briefly described that e-commerce is a form of modern business through internet facilities or trading on the internet.

¹⁸ Niniek Suparni, *CYBERSPACE: Problematics and Anticipation of Its Regulations* (1st edn, Sinar Grafika Offset 2009) 33

¹⁹ Ibid 32

²⁰ UNCITRAL Model Law on Electronic Commerce 1996, art 1-2

²¹ Abdul Halim Barkatullah and Teguh Prasetyo, *E-Commerce Business: Study of Security Systems and Law in Indonesia* (1st edn, Pustaka Pelajar 2005) 11

As it is mentioned in chapter one that technology develops rapidly nowadays, thus the factors that boost the rapid development of e-commerce are²²:

1. e-commerce can reach out to more consumers, and at any time consumers can access all information continuously.
2. e-commerce can push the creativity from the business actors' sides quickly and precisely, and the distribution of delivered information take place periodically.
3. e-commerce can create high, cheap, and informative efficiency.
4. e-commerce can increase consumers' satisfactory; by the fast, easy, safe, and accurate service.

2.2.2 The Impact of Electronic Transactions towards Consumer

Protection

In the electronic transaction, every consumer acts on behalf of their own without communicating with other consumers. They conduct the transaction separately since they have no media in the website store to communicate, very different from the real world transaction. However, regardless of the level of internet usage for consumer transactions, the relative certainty that has been established at the scale and form of protection in the real world will be damaged in the context of the internet.²³ This is due to the territorial basis of substantive rights and obligations of buyer and seller, and also the law severely limits its application to electronic transactions. Furthermore, the regulations in each country are less relevant because the nature of online transactions does not have a limit. Considering the vital role of law and government in the involvement of consumer protection systems around the world, territorial boundaries that attach to regulation and administrative interventions will let online shoppers without the appropriate protection according to the real world

²² Mansur and Gultom, 'Cyber Law: Legal Aspect of Information Technology' 166

²³ Assafa Endeshaw, *Internet and E-Commerce Law: with a focus on Asia-Pacific* (Prentice Hall 2001) 407

where they reside.²⁴ Therefore, the overall impact of electronic transactions reduce the role of national regulation. The nature of cross-border transactions makes the application of domestic law, including its implementations, very doubtful and perhaps irrelevant.²⁵

2.3 Regulations under Indonesia Law

Indonesia has set some regulations concerning consumer protection since 1999. The usage of information technology, media, and communications are regulated under EITA which is made in 2008. EITA briefly guides the people who conduct transactions electronically; still, it does not give enough protection for consumers who make online trade. It is amended in 2016 with no further improvement on consumer protections; thus consumers who shop through e-commerce are still not well protected. The existence of law regulating consumer protection is not intended to kill the business actor. Consumer Protection Act can encourage the birth of healthy companies and promote the delivery of companies that are resilient in facing the actual competition by providing quality products/services.²⁶

2.3.1 Consumer Protection in relation to Electronic Transactions

The issue of consumer protection is an essential matter until now. Business actor treats the consumer as the party that is easy to be exploited. Consumers are offered many kinds of products and services through advertisement, promotion, and other offering ways, so the bargaining position of consumer and business actor is often not balanced. That factor is worsened with the fact that most people are lack of knowledge as their rights of consumers and the complaint guideline towards their violated rights. Referring to the rights of consumers as it is mentioned above, consumers do not get the clear explanation of the consumed products or services,

²⁴ Ibid 409

²⁵ Ibid

²⁶ Happy Susanto, *Consumer Rights if Harmed* (1st edn, Transmedia Pustaka 2008) 2

especially when the transaction is done electronically; apparently, consumers do not have the same bargaining position compare to the business actor. It shows by the standard clause displayed on the website which is not informative and cannot be bargained.²⁷

The instrument of legal protection for consumers in the trade transactions is manifested in two forms of rules. In which are legal protection through specific laws that are general for everyone who conducts sales and legal protection base on the exclusive agreement that is made by the parties, its form in the format of substance or content of agreement between consume and business actor (such as: provision regarding compensation, the period of claim submission, and dispute resolution).²⁸

2.3.1.1 Definition

CPL defined consumer protection as every effort which guarantees the legal security to protect consumers²⁹, hoping that business actors are no longer act arbitrarily which always harm consumer's rights. Consumers are every person who uses products and/or services that are not for trading and available in society for the benefit of themselves, family, other people, and other living things.³⁰ In economic literature, there are known terms, such as intermediate consumers and end consumers. End consumers are end users of a product, while intermediate consumers are consumers who use a product as part of the production process of another product (for example those who get products for resale or other commercial purposes). The definition of consumers in CPL is end consumers.

2.3.1.2 Principles

In consuming products and services, consumers always want satisfaction with the products they consume. While business actors tend to want to obtain economic benefits from the relationship. The desire of both parties will be easy

²⁷ Susanto, 'Consumer Rights if Harmed' 3

²⁸ Elisatris Gultom, *Cyber Law: An Introduction* (1st edn, ELIPS 2002) 61

²⁹ Consumer Protection Law 1999 (CPL), art 1(1)

³⁰ CPL, art 1(2)

to achieve if both of them carry out their obligations correctly and are based on good faith, but in reality, it is often that consumer does not get what they expect and it is resulting in that consumers are harmed.³¹ Consumer protection is based on the principles of benefit, justice, balance, security and safety, and legal certainty of the consumers.³²

2.3.1.3 Objectives

The protection of consumer rights can go along with the development of democracy that occurs in a country. In a democratic country, the rights of citizens, including the rights of consumers shall be respected. There is a balance position between producer and consumer since both of them are the same in front of the law.³³ As mentioned under CPL, the objectives of consumer protection are³⁴: make consumers be able to protect themselves by increasing their awareness, ability, and independence; avoid harmful excess of using the products and/or services to raise consumer's dignity and value; increase consumer's ability to choose,

³¹ Mansur and Gultom, 'Cyber Law: Legal Aspect of Information Technology' 155-156

³² CPL, art 2

- The principle of benefit is intended to mandate that all efforts in the implementation of consumer protection must provide the maximum benefit for the interests of consumers and business actors as a whole.
- The principle of justice is intended so that the participation of all people can be realized optimally and provide opportunities for consumers and business actors to obtain their rights and carry out their obligations fairly.
- The principle of balance is intended to provide a balance between the interests of consumers, business people, and the government in a material or spiritual sense.
- The principle of consumer safety and security is intended to provide guarantees for security and safety to consumers in the use, usage and utilization of consumed or used products and/or services.
- The principle of legal certainty is intended so that both business actors and consumers obey the law and obtain justice in the implementation of consumer protection, along with the state that guarantees legal certainty.

³³ Susanto, 'Consumer Rights if Harmed' 7

³⁴ CPL, art 3

determine and claim the rights as consumer; creating a system of consumer protection that contains the elements of legal certainty and information disclosure and access to information; cultivate the awareness of business actor regarding to the importance of consumer protection, so that the attitude of honest and responsible growth in conducting the business; and improve the quality of the products and/or services that ensure the continuity of business in the production of products and/or services, health, comfort, security and consumer safety.

2.3.1.4 Rights and Obligations of Consumers

Consumers need to pay attention to the rights that have to be fought for. When the rights are explicitly harmed, consumers cannot stay quiet without doing anything. Some factors causing the weak position of consumers in conducting the trade transactions: the ignorance of consumers towards business actors, consumers lack understanding of the transaction mechanism and lack clarity of information provided by producer regarding the offered products.³⁵ Consumer's rights are regulated under CPL article 4. Such rights mentioned are sourced from consumer rights that are recognized internationally. John F. Kennedy, former president of United States, is the first to express the consumer right through "A Special Message for the Protection of Consumer Interest" or better known as Declaration of Consumer Right at March 15th, 1962.³⁶ The declaration brings on four consumers' fundamental rights, which are: the right to be secured, the right to be informed, the right to choose, and the right to be heard.³⁷ Another international source comes from the United Nations

³⁵ Mansur and Gultom, 'Cyber Law: Legal Aspect of Information Technology' 146

³⁶ Susanto, 'Consumer Rights if Harmed' 24

³⁷ Consumers Association of South Australia Inc. <<http://www.consumerssa.com/consumer-rights/>> accessed 14 Nov 2018

- The right to be secured, consumers need to get protection over the consumed products or services.

- The right to be informed, consumers have the right to obtain the clear and comprehensive information about consumed products or services.

in its Resolution Number 39/248 Year 1985. It gives the formula about consumer's rights that have to be protected by business actors which are based on the result of research towards 25 joint countries of the United Nations.³⁸

Besides the rights as provided by CPL, consumer also has obligations that must be followed. When electronic transactions are conducted they shall act in good faith by reading and follow the provided information of the stuffs and/or services, pay according to the agreed conversing value, and comply with the appropriate legal solution of consumer protection dispute.³⁹

2.3.2 Business Actors

Business actors are an individual person or a company, in the form of a legal or non-legal entity established and domiciled or engaged in activities within the legal territory of the Republic of Indonesia, conducting various kinds of business activities in the economic sector through contracts, both individually and collectively.⁴⁰

-
- The right to choose, consumers deserve to choose products or services at a reasonable price. Consumers shall not be in the position of coercion to choose a certain product that may harm the rights.
 - The right to be heard, consumers shall obtain the right that the needs and claims can be heard both by related business actors and consumer protection institutions.

³⁸ Nasution AZ, *Consumer and Law, Social, Economic, and Law Observation towards Indonesian Consumer Protection* (Pustaka Sinar Harapan 1995)

Such consumer rights as mentioned are:

- Consumer protection from the dangers of health and safety.
- Promotion and protection from social interests, consumer economics.
- The availability of adequate information for consumers consumer education.
- The availability of the efforts to effective compensation.
- Freedom to form consumer organizations or other organizations that are relevant and provide opportunities for these organizations to voice their opinions in the decision-making process that concerns their interests.

³⁹ CPL, art 5

⁴⁰ CPL, art 1(3)

2.3.2.1 Rights and Obligations

To provide legal certainty, and to clarify the rights and obligations of interacted parties, the rights and obligations of business actors are no less important than the rights and obligations of the consumer. The existence of such rights, and obligations are meant to create comfort in business and balanced relationship parred between business actor and consumer.⁴¹ Thus, the rights and obligations of business actors as followed:

The rights of the business actors are⁴²: receive the payment in accordance with the sales agreement on the conditions and conversion value of the products and/or services, obtain legal protection from the consumer's acts of bad faith, conduct proper self-defense in the legal solution of the consumer's dispute, restore its good reputation if legally proven that the consumer's damage is not caused by the purchased stuff and/or services; acquire the rights as stipulated in the other regulations.

The obligations of the business actor⁴³ are when electronic transaction is conducted they shall: act in good faith, provide correct and clear information with regard to the condition and warranty along with the explanation of the usage and maintenance, treat and serve the consumer properly and non-discriminatively, ensure the products and/or services produced and/or traded based on the prevailing quality standard provisions, giving the chance to consumers to try on specific products and/or services and provide warranty on the produced and/or traded products (limited to the products and/or services that can tried without causing damage), offer compensation for the damages caused by the usage of the products and/ or services and if the products and/or services received or used do not accord with the agreement.

Business actors included in this definition are corporate companies, state-owned enterprises, cooperatives, importers, traders, distributors, and others.

⁴¹ Susanto, 'Consumer Rights if Harmed' 34

⁴² CPL, art 6

⁴³ CPL, art 7

2.3.2.2 Liabilities

Besides the rights and obligations that business actor has to bear, there is also liability which is the part of obligation that binds business actor when they do business. It is called product liability. Product liability is a legal responsibility from an individual or company who produce a product, from an individual or company who are engaged in a process to produce a product or to distribute that product.⁴⁴ Business actors are responsible for giving compensation for the damage of consumer due to using or consuming the products and/or services produced or sold by the business actors. Compensation can be in the form of refund or replacement of products and/or services that is similar or equivalent value, or health care and/or insurance coverage in accordance with regulations).⁴⁵

2.3.3 The Role of Government to Protect Consumer

The government shall protect the public interest from any threat as a result of misusing Electronic Information and Electronic Transactions that offends public order, in accordance with provisions of Laws and Regulations.⁴⁶ The government role as the regulatory and policyholders is crucial. The responsibility of the government to do surveillance of consumer protection is meant for empowering the consumers to get their rights. Meanwhile, the government responsibility of supervising the consumer protection execution also becomes an essential part of building positive and dynamic business activities so that consumer rights are still getting the attention of business actor.

There are some reasons cause the government needs to participate in providing this protection, namely: protect the interest of consumers and business actors, avoid unfair trade practices to develop, create transparency, and create the business climate can to increase economic growth both macro and micro.⁴⁷

⁴⁴ Susanto, 'Consumer Rights if Harmed' 37

⁴⁵ CPL, art 19(1,2)

⁴⁶ EITA, art 40(2)

⁴⁷ Mansur and Gultom, 'Cyber Law: Legal Aspect of Information Technology' 159

The government is responsible for fostering the implementation of consumer protection which guarantees the rights of the consumers and business actor and the implementation of the obligations of the consumers and business actor.⁴⁸ Fostering consumer protection that organized by the government is an effort to guarantee the acquisition of the rights of consumers and business actors as well as carrying out their respective obligations in accordance with the principles of justice and the principle of balance of interests.⁴⁹ The task of fostering the implementation of consumer protection is carried out by the related minister; such tasks are: creating the business climate and the growth of the healthy relationship between business actor and consumer, and the development of non-governmental consumer protection institutions.

Besides developing the guideline, the government has another role in protecting consumers which is supervision. Not only government but also public and non-governmental consumer protection institutions shall supervise the implementation of consumer protection as well as the application of the legal provisions.⁵⁰ According to this statement, the task of supervision is not only imposed on the government, but public and consumer protection institutions may actively involve. Supervision by the public and non-governmental consumer protection is conducted on the products and/or services which circulate in the market, and if the results of the supervision turn out to deviate from the legal provisions and harm the consumers, the government shall take measurements according to the applicable regulations.⁵¹

⁴⁸ CPL, art 29(1)

⁴⁹ General Explanation of Government Regulation Number 58 Year 2001 concerning about Guidance and Surveillance the Implementation of Consumer Protection

⁵⁰ CPL, art 30(1)

⁵¹ CPL, art 30(3,4)

CHAPTER 3

MODEL LAW OF FOREIGN LAW

The increasing usage of the internet and e-commerce are encouraging countries to develop their law instrument to protect people's interest. United States of America (USA) and European Union (EU) seem to shape the direction of the way and set the general scope of the latest regulation on the virtual world for the other countries.⁵² Both countries are quite dominant among the rest for their involvement in regulating law of internet and e-commerce, they announce general policy more frequently and continuously which is followed by the compilation steps of regulation with the different level of details. USA has been putting its position to have the most advanced regulation relating to internet and e-commerce, while the EU keeps trying to catch up with them. By reason of there are much trustmark company that has been established there and the regulations that set the base of trustmark is the most advanced one; thus EU law is chosen to be the benchmark for this research.

As in Indonesia, it is called as trustworthiness certification, under EU it has a different name as trustmark. A trustmark can be used worldwide while a trustworthiness certification depends on the reliability of a company that issues the certificate.⁵³

3.1 Regulations under the European Union

It is not obligatory in EU for trustmark to be the requirement; thus it does not have regulations which address only trustmark. However, some regulations of EU law mention on few related features which are related regulation to the usage of the trustmark itself, the trustmark code of conduct, and the details about the trustmark company. Trustmarks are in the core of e-commerce market communication; the main

⁵² Endeshaw, 'Internet and E-Commerce Law: with a focus on Asia-Pacific' 431

⁵³ Chatanut Khiewcham, 'Legal Problems of E-Commerce Trustmarks in Thailand' [2016] 7

regulation set the usage of trustmarks is about commercial communication aimed directly at consumers which include in the 2005 Unfair Commercial Practices Directive (UCPD). While the regulations of the trustmark company are under Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on Electronic Identification and Trust Services for Electronic Transactions in the Internal Market and Repealing Directive 1999/93/EC. It is usually deemed to be a guarantee; on the other hand; there is a principle that a trustmark has to guarantee something that is not already set by law.⁵⁴ Some particular quality marks or labels may have legal rules, but to set up a trustmark for e-commerce and form the code of conduct is the principle as how people desire to be. Consumers in substance gain benefit from certification, supervising, enforcement by a third party and other features of wholly designed trustmarks.⁵⁵ While business actors show the compliance of the terms by putting a trustmark, something more than what law regulates, although consumers may expect more from trustmarks.

UCPD covers the area where the trustmark company offers services to the consumer such as guarantees which is considered as a service. While the relationship between the trustmark company and business actors is not covered in UCPD but in 2006 Misleading Advertising Directive. According to UCPD, these things are considered as a misleading commercial practice⁵⁶:

- To declare as the signatory to a code of conduct when the business actor is not.
- To show anything which has a similar meaning of a trustmark without having received the obligatory authorization.

⁵⁴ Unfair Commercial Practices Directive (UCPD) Annex I, item 10, which states that it is a misleading commercial practice to present rights given to consumers in law as a distinctive feature of the trader's offer

⁵⁵ Trzaskowski, J., *E-Commerce Trustmarks in Europe: an overview and comparison of Trustmarks in the European Union, Iceland and Norway* (2006) 21

⁵⁶ Directorate General for Internal Policies, *A Pan-European Trustmark for E-Commerce: Possibilities and Opportunities* (Policy Department Economic and Scientific Policy 2012) 79

- To declare that a code of conduct gets the acceptance from public or other institutions which it does not get.

- To claim that a public or private institution has consented the commercial practices and products of business actors while it is not the fact. Claiming such a thing without fulfilling the requirements of approval.

Under the EU, the trustmark company is differentiated by two groups; the qualified and non-qualified. To be the qualified trustmark company, there is a set of regulations that non-qualified trustmark company have to comply, and by having such intention, they also have to submit the notification to the supervisory body along with the conformity assessment report. After it is verified that particular company is qualified, it will be put to the trusted list which is consisted only the qualified trust services, and each Member State of EU shall publish and maintain the list as soon as it has changed. Business actors who intend to put the trustmark on their website may check the trusted list to consider which trustmark company they shall be working with. Another point of being the qualified trustmark company means the displayed trustmark in each website shall be made to link to the relevant trustmark company that issue the particular trustmark. Both qualified and non-qualified trustmark company shall comply with the security requirements, while the monitoring by supervision body is only done for the qualified trustmark company.⁵⁷

3.1.1 Liability

A trustmark is a branding service proposed to business actors by the company that issues a trustmark. Trustmarks may raise expectations to the consumers that the company who issue the certificate may be liable for any damage arises or when the expectations of consumers are not satisfied. However, unless the trustmark company gives assurance that particularly mentions it will cover any losses occur, the

⁵⁷ Electronic Identification and Trust Services for Electronic Transactions in the Internal Market and Repealing Directive 1999/93/EC [2014], art 20

trustmark company is usually not liable for all damages caused by a business actor.⁵⁸ By displaying the trustmark logo on the website, it means that business actor has complied with the terms of obtaining trustmark and shall follow the terms of using the specific trustmark. When the business actor fails to meet the terms for using the particular trustmark, business actors may have the liability to both consumer and the trustmark company. All of the people that involve in the business market bear the risk of liability; therefore it will be explained about the situations where the trustmark company shall take responsibility when the code of conduct is not followed by either business actors or the trustmark company. On this paper, the referred risk is on the civil liability where the trustmark company may be liable when the business actor or the trustmark company itself acts not accordingly to the code of conduct. An essential common thing of civil liability is when someone negligently does something that harms another party.⁵⁹ Under EU regulation number 910/2014 article 13, it is regulated about the liability and burden of proof. The trustmark company shall be liable any damage arises intentionally or negligently. It is stated the difference of burden of proof between qualified and non-qualified trustmark company. For the non-qualified trustmark company, it lies within the party who claims the damage. While for the qualified trustmark company, it is assumed unless that qualified trustmark company proves that the loss arises without the intention or negligence of that qualified trustmark company. To what extent the liability is depending on what the trustmark company promises and when they cannot deliver what they have pledged to so it results in the loss.

There are no strict stipulations concerning what is the scope of a trustmark has to cover. But to promote transparency, the scope of the application shall be expressed in which the consumers can understand easily. Usually, the consumer will see a trustmark as a warrant that the trustmark company is pledged that the websites of business actors who have obtained the trustmark will comply with the rules in the code of conduct. To execute an evaluation of either the practice of

⁵⁸ Directorate General for Internal Policies, 'A Pan-European Trustmark for E-Commerce: Possibilities and Opportunities' 54

⁵⁹ Ibid 58

business actor or criteria that set in the code of conduct is the essential point of trustmark company issues a trustmark. Besides this point, another important matter is to what extent the trustmark pledges the fulfillment with the code of conduct principle. The trustmark company usually conduct an inspection of the business actor's website by doing the recurring checks to avoid any legal violations, as their promise to work in accordance with the e-commerce Europe Code of Conduct. However, there is a possibility that the trustmark company will fail to recognize the breaches or those breaches happen as intended to business practice on the business actor's side. The trustmark company is unlikely to be liable for every violation, except they particularly mention to be fully accountable. The interpretation of national law will determine if the trustmark company shall be liable, including if the trustmark company is unsuccessful in conducting the controls with the reasonable consumer expectations that may establish from how the trustmark company advertises its trustmark.⁶⁰ Whether the business actor or the trustmark company is not successful in meeting their responsibility, it is essential to take into consideration what consumers reasonably expect from a trustmark and the way it is advertised. Where the trustmark company informs the consumers about the limits on the usage of the services they offer in advance and where a third party can recognize those limits, the trustmark company will not be liable for damages occurring from the used service which exceed the indicated limits.

One of the examples of the trustmarks company in EU mentions on its website that if people see the trustmarks from their company, it protects consumers when they have a complaint regarding their transaction purchase through an online store in EU jurisdiction. Its trustmark company is committed to working in accordance with the e-commerce Europe Code of Conduct, ensuring the standards of ethics in the digital marketplace. When there is any damage arise regarding the electronic transaction, the trustmark company can function as the online dispute resolution. So the online stores that already obtain trustmark from the trustmark

⁶⁰ Ibid 59

company will provide consumers the choice to submit claims through the trustmark company service center free of charge (if their customer care service is unable to solve the dispute). In the case of a consumer complaint, the trustmark service center gives a settlement outside the court that allows consumers to achieve an easy and fast solution. Thus, the trustmark company can be the mediator between consumers and business actors when any dispute arises. If the help that the trustmark company provides to the consumer regarding the solution for the conflict still cannot be achieved, a legal resolution of the dispute is still available so consumers can go after freely for legal assistance.⁶¹

3.1.2 Enforcement

Even though there is no specific part of EU regulations addressing only trustmark, EU Regulation Number 910/2014 regulates about control and enforcement. As it is mentioned that the trustmark company shall comply with the security requirements, they have to take technical measures to ensure the security of the services they offer. If there is any breach of security detected, they have to inform the supervisory body within 24 hours so the public shall be notified. Formats and procedures, including deadlines of measures, are still not regulated under this regulation. Supervision of qualified trustmark company will be done by conducting an audit at least every two years by the concerning authority to confirm that qualified trustmark company is still qualified. Supervisory body may any time conduct an audit to any company without having any prejudice. By not passing the conducted audit, the trustmark company is considered not qualified any longer, and its company name will be removed from the trusted list. While the trustmark company can go from qualified to non-qualified, any websites which have obtained the trustmark may lose its mark. The trustmark company can revoke trustmark from the websites if business actors are not complying with the code of conduct that the trustmark company has been set.

⁶¹ Trust Ecommerce Europe <<https://www.ecommercetrustmark.eu/>> accessed 28 October 2018

Fundamentally the obedience to a trustmark certification can be found upon self-assessment and self-declaration. While it has discusses self-assessment is “obviously unsuitable for generating an increased trust in the trustmark owner”.⁶² Another related discussion is whether the institution that organizes the inspection shall be free from the trustmark company because of the chance of prejudice since trustmark company desire to obtain a financial interest in a large amount of paying customers.⁶³ When establishing the basic rules for trustmark certificate, it is necessary to notice that conformation with some terms is simpler to manage to compare with others. Differ to conformation with information terms which are usually accessible, compliance with terms regarding commercial practices and working with personal data appears to be quite complicated because it is burdensome to determine what the business actors do and some actions can only be done once in a while. The rationale of establishing EU trustmark is to giving cue of trustworthiness to consumers. Thus, effective inspection and appropriate enforcement of the terms play the role of a trustworthy trustmark.⁶⁴ Poor control and enforcement carry the risk that several faulty companies may harm the credibility of entire trustmark and all the business actor who are connected.

3.2 UNCITRAL Model Law on Electronic Commerce (1996)

Besides USA and EU who are the active players of developing the law of internet and e-commerce, one of the international organizations which are, United Nations Commission on International Trade Law (UNCITRAL) also plays its role to contribute developing the related law. While UNCITRAL never regulates specifically regarding trustworthiness certification, it keeps establishing the legislative proposals and draft arrangements of electronic transactions act. Through their output, they have

⁶² Spletter, C., *The Significance of Trustmarks in B2C E-Commerce* (2003) 36

⁶³ Ibid 36

⁶⁴ Directorate General for Internal Policies, ‘A Pan-European Trustmark for E-Commerce: Possibilities and Opportunities’ 79

influenced some governments and industry primarily in the field of confidentiality and security, the legal status of electronic transactions and in terms of the application of uniformity as a basis for creating a fair competitive arena for all countries.⁶⁵

Some main principles under UNCITRAL Model Law on Electronic Commerce which becomes the essential legal basis is that⁶⁶: all electronic information in the form of electronic data have the ability of legal effect, validity or enforcement and where the law requires the existence of an information must be in written form then electronic data can qualify for it. Since 1996 UNCITRAL has been arranged Draft Uniform Rules on Electronic Signatures to discuss issues such as verification and certification, risk allocation and accountability among various parties and also the processes and institutions that may be needed.⁶⁷ Another feature of the Uniform Rules is the inclusion of minimum standards for trustworthiness certificate, especially when striving for cross border certification.

UNCITRAL Model Law on Electronic Commerce does not set rules to oblige trustworthiness certification which result to lead to the domestic rules of each country. It leaves them with no stipulation of the trust system under e-commerce. It is necessary of UNCITRAL as the international agreement to regulate about trustworthiness certification since the character of e-commerce which is the ability to cross boundaries between countries cause the regulation to be a matter of international trade policy and law. According to Schmitthoff, foreign trade is no longer an activity that is only carried out by a group of the marginalized community; it is now the lifeblood of Europeans who are traveling by sea.⁶⁸ Thus, legal systems which serve the larger sector compare to the population and change the way of informal problems are solved become appropriate procedures that emerge in various countries.

⁶⁵ Endeshaw, 'Internet and E-Commerce Law: with a focus on Asia-Pacific' 431

⁶⁶ Barkatullah and Prasetyo, 'E-Commerce Business: Study of Security Systems and Law in Indonesia' 137

⁶⁷ Endeshaw, 'Internet and E-Commerce Law: with a focus on Asia-Pacific' 436

⁶⁸ Clive M. Schmitoff, *Commercial Law in a Changing Economic Climate* (2nd edn, Sweet & Maxwell 1981) 5

Harmonization of internet law is needed among countries in the world that apply to transactions which are carried out in the virtual world by establishing international agreements. With the harmonization, there is no need to raise doubts or uncertainties about which state law is enforced and in the state court where the claim must be filed if a dispute arises between the parties making an e-commerce transaction.⁶⁹

The development of e-commerce continues to create new problems for established legal rules. Temporary measures have also been taken by international institutions and governments to form a limited number of broad frameworks for managing e-commerce. However, proposals that discuss legal improvement comprehensively have ever turned up, from a technological point of view, to obtain an agreement framework that is conducive to e-commerce necessity.⁷⁰ It seems that an international agreement can be the way that can accommodate the scope and speed of unpredictable technological developments, provided that it will create certainty even if it must be in broad terms, by way of determining the rights and obligations of the parties transacting through e-commerce.

⁶⁹ Barkatullah and Prasetyo, 'E-Commerce Business: Study of Security Systems and Law in Indonesia' 133

⁷⁰ Endeshaw, 'Internet and E-Commerce Law: with a focus on Asia-Pacific' 257

CHAPTER 4

TRUSTWORTHINESS CERTIFICATION UNDER INDONESIA LAW

4.1 Current Existing Law

Legislative developments are facing a new challenge brought on by the rapid development of online technology and by the newly created difficulty of applying existing regulations in a networked environment.⁷¹ Regarding the previous statement, electronic transactions cause consumers not knowing who they are dealing with under electronic transactions. There are no ways to identify who the business actor is or the exact location of where the business is conducted. Other problems are whether consumers' data will be misused and what to do when there is any damage. The absence of knowledge about details of transactions causes consumers not to have the trust of doing electronic transactions. According to Karim Benyekhlef, "... Yet, one cannot claim to fully comprehend and understand this phenomenon if one reduces it to only its technical component. Obviously the latter might seem much more spectacular than its legal counterpart. However, regardless of how impressive electronic highways may become, it remains undeniable that their integration and acceptance in the social and economic fabric will be dependent notably on the legal guarantees they can provide. In other words, the consumer will only be inclined to use these new services if they can offer a degree of legal security comparable to that provided in the framework of traditional operations ..."⁷²

Regulation of trustworthiness certification is stipulated under EITA Article 10 (1) that states, any business actor who conducts electronic transaction may be certified by trustworthiness certification bodies. Trustworthiness certification bodies are the private institution established by the professionals. It is supervised and registered

⁷¹ Mansur and Gultom, '*Cyber Law: Legal Aspect of Information Technology*' 146 Severine Dusolliner, Legal Issues of Electronic Commerce, ERCIM News No. 30 July 1997

⁷² Suparni, 'CYBERSPACE: Problematics and Anticipation of Its Regulations' 34

under the lists of Minister of Indonesia. Trustworthiness certification gives five different kinds of security, which are: identity seal, security seal, vulnerability seal, consumer rating seal, and privacy seal.⁷³ The security as provided give different protection for each seal. Identity seal ensures that the identity of business actors are correct such as; name, status, address, phone number, e-mail address, business license, and tax number. Security seal guarantees that the security system of exchange data process has been proven to be the safe one. Vulnerability seal makes sure that the management system of information security which is applied by the business actor refers to the standard security of electronic system based on the law regulation. Consumer rating seal means that business actors have got consumers' satisfaction based on real experience through the process of pre-transaction and post-transaction. Privacy seal guarantees personal data of consumers is protected as it should be. According to Implementation of Electronic Systems and Transactions (hereinafter will be referred to IEST) Article 67(1), trustworthiness certification is meant for protecting the consumers who do transaction electronically. However, the law may be perceived as not in line when other regulation does not require trustworthiness certification as the obligatory.

EITA Article 5 and 6 mention that electronic information and/or documents are considered to be valid evidence. The validity is not limited only to the extent of the information shall be in writing or original form, electronic information and/or documents are presumed to be legitimate as long as the contained information is accessible, displayable, guaranteed its wholeness, and can be accounted for so that it explains a situation. Under Indonesia law, electronic data are recognized thus it needs further regulation for its implementation. Article 9 states that business actors who conduct trade electronically shall provide complete and correct information related to their identity as the legal subject along with the terms for the validity of the contract and the explanation of offered products/services, on the contrary, it does not have legal enforcement. Therefore, business actors will not feel obliged to do so.

⁷³ IEST, art 68(1)

4.2 Analysis

Consumer trust in electronic transactions is described as the consumer desires to be susceptible to the acts of the business actor under electronic transactions, based on the hope that the business actor will behave in the certain proper way, regardless of the capacity of the consumer to look after or oversee the business actor.⁷⁴ Under electronic transactions, there are many uncertainties online. Consumers will not know with whom they are doing transactions, whether the products or services they expected will be the same as they get, or if their personal data are going to be safe. These kinds of uncertainties and risks that consumers have to take only occur when they do the online transaction. So it can be said that there are more risks in the virtual world rather than the real world; therefore online trust should be established. One of the inputs to solve this problem is to increase the online security but according to Weckert, “one solution is to treat the online trust as a purely technical security issue”⁷⁵. Only security cannot deliver online trust; it must be confidence in people. Therefore it is considered as not enough. Such resolution may assist in securing electronic transactions in the way of securing the private information, but still only security cannot deliver online trust. Confidence in people shall be established in the ways when the security is proven to be assured along with the identity of business actors is discovered. Some of the ways to establish online trust of consumers are mentioned below.

First, something new from the internet regarding to consumer protection is the transparency of business since trustworthiness certification requires information that contains identity of legal subject (owner of the business), status and competence of legal subject, explanation of certain things that become legal requirements of the agreement, and explanations of the offered products and/or services. The protection that consumers get from the disclosures of business on the internet will not be given

⁷⁴ Chernovich, ‘Trust in E-Commerce: the Moral Agency of Trustmarks’ 12

⁷⁵ Ibid 13

directly. But at least consumers by the transparency, it will gain more of consumers trust and they will get another benefit by the pressure which is given to the market to be more sensitive towards the consumers' needs and their performance.⁷⁶ Through the consumer rating seal, potential consumers may check the review of offered products or services as given by the consumers who already purchased such things. Consumer rating may need the rating scheme where consumers can express their experience with the certain online stores so it will help potential consumers to make up their mind in doubt of online shopping, whether the products will satisfy their expectations and so on. To avoid the manipulated reviews, consumers have to provide their correct data to give reviews (such as putting the identification number of theirs). Related to the transparency of transactions, consumers shall feel secure during the electronic transactions. All data relating to the business actors are provided; thus if anything happens consumers may contact them directly or through the issuer company.

Second, the vulnerability of online systems, especially the possibility of disruption of personal information provided by consumers on e-commerce websites, especially in terms of payments, has added to the concerns of consumers who use online transactions without adequate security. Reports about hackers' actions in gaining access to the network in secret and misuse of personal data such as stolen credit card numbers, distribution of consumer information collected through doubtful methods, and the potential theft of valuable information stored by insiders have caused anxiety for those who intend to make transactions online. Consumer concerns, in particular, are on identity theft and imitation and misuse of information they need to provide when registering access to information sources on the internet or making payments to complete online orders. Trustworthiness certification from its function ensures that both security and management systems are referring to the standard which based on the regulation. Thus, personal data of consumers are automatically protected by using these systems.

⁷⁶ Endeshaw, 'Internet and E-Commerce Law: with a focus on Asia-Pacific' 419

Third, as it is known that dispute settlement through litigation has some weakness, such as⁷⁷ litigation forces parties to be in the extreme position and need defense, it raises all issues in a case thus encouraging the parties to investigate the weakness of another party, litigation process takes a long time and is expensive, judges often act not neutral and do not follow the development of knowledge which underlies the resolution of new legal problem⁷⁸. From those various weakness, it seems that dispute settlement through litigation is not in accordance with the nature of e-commerce and requires an effective, efficient, and inexpensive system. Alternative dispute resolution can be the answer to solve this problem in settling the dispute as well as a form of legal protection. Besides the protection that trustworthiness certification provides as stated above, according to the EU system of the trustmark company, it also functions as the online dispute resolution. And when there is any dispute arises, the company that issues the certificate can be the mediator to solve the dispute between consumer and business actor. Consumers may choose to go to further legal proceedings when the company fails to settle the dispute. Governments will supervise the trustworthiness certification bodies that are established by private sectors. The company as private sectors who issue the trustworthiness certification to business actors will be liable only to the extent of the code of conduct. Moreover, business actors have to be liable for any damages arise while the issuer company can be the mediator between business actors and consumers to solve the problem. In regard to the case of business actors do not comply with the code of conduct from the issuer company, trustworthiness certification may be revoked from the business actors' website. When the certificate is revoked means that the website cannot be used for e-commerce website any longer.

Fourth, since it has different meaning towards trustmark and trustworthiness certification, consumers may be doubtful if trustworthiness certification is reliable enough for its implementation. Under Indonesia law, government

⁷⁷ Mansur and Gultom, 'Cyber Law: Legal Aspect of Information Technology' 168

⁷⁸ Imamulhadi, *Dispute Settlement under Electronic Trading* (Cyber Law: An Introduction, ELIPS Project 2002) 80

differentiates between foreign trustworthiness certification bodies which are established outside Indonesia jurisdiction and trustworthiness certification bodies that are established within Indonesia jurisdiction. For those who are established under Indonesia jurisdiction, the trustworthiness certification bodies or issuer company shall ask another company to obtain the trustworthiness certification to guarantee their reliability and follow that particular company's code of conduct. Issuer company cannot issue the trustworthiness certification for themselves to guarantee their reliability. Therefore, between issuer company shall guarantee each other's reliability to avoid the possibility of fraud.

In the ideal format, consumer protection shall be effective when it is done at the same time in different ways. From one side, there are firm consumer institutions who are the representatives that accommodate and fight for consumer aspirations. While from another side, there are also departments of authorities which specifically handle consumer protection problems.⁷⁹ In 2019, Indonesia has several consumer protection institutions that are actively fighting for consumer rights since 1973. Consumers may come to the office directly or contact them through the call center and online service. However, the institutions cannot help much since the regulation itself is not enough to cope with electronic transactions. Cyberspace demands fast reaction toward legal problems that appear continuously in different content and jurisdiction. The general tendency is to try to apply existing laws to deal with issues that are experienced without making many changes, even when modifications appear to be a necessity or unavoidable.⁸⁰

Given the definition of consumer protection by CPL which is consumer's protection is every effort made to guarantee legal certainty in the interest of protecting consumers, the government has the role as the regulatory, holding the responsibility to empower consumers getting their rights. Another vital role of government is to supervise the implementation of legal provisions and trustworthiness certification is one of the implementations of every efforts to protect consumers. It can be concluded

⁷⁹ Sudaryatmo, *Law and Consumer Advocacy* (2nd edn, PT Citra Aditya Bakti 1999) 81-82

⁸⁰ Endeshaw, 'Internet and E-Commerce Law: with a focus on Asia-Pacific' 243

that government does not carry out its role optimally, no obligatory for trustworthiness certification may be considered as the loophole for every effort made to guarantee legal certainty in the interest of protecting consumers. Serving every possible protection for consumers to prevent future damage has to be done by the government through legal regulations.

A table comparison of trust service between EU and Indonesia:

<i>List</i>	<i>European Union</i>	<i>Indonesia</i>
<i>Operator</i>	Non-profit organization or private sector	Private sector (trustworthiness certification bodies)
<i>Character</i>	Trustmark	Trustworthiness certification
<i>Liability</i>	Yes, only to the extent to the code of conduct ⁸¹	Not regulated
<i>Obligatory</i>	No	No
<i>Supervision by Government</i>	Yes	Yes
<i>Enforcement of Law</i>	Yes	Not regulated

By 2030, the United Nations set the goals to be accomplished which is Sustainable Development Goals (SDGs). The Member States of United Nations have agreed since 2015 to work together globally to end hunger and poverty all around the world, yet the goal is not only limited to that. There are 17 goals⁸² to ensure

⁸¹ Electronic Identification and Trust Services for Electronic Transactions in the Internal Market and Repealing Directive 1999/93/EC [2014], art 13

⁸² Sustainable Development Goals as followed: no poverty; zero hunger; good health and well-being; quality education; gender equality; clean water and sanitation; affordable and clean energy; decent work and economic growth; industry, innovation and infrastructure; reduced

sustainable development in the world, and by obliging trustworthiness certification makes one of the goals to be achieved, which is ensuring sustainable consumption and production patterns. Trustworthiness certification guarantees the business transparency; thus it boosts the confidence in consumers.



inequalities; sustainable cities and communities; responsible consumption and production; climate action; life below water; life on land; peace, justice and strong institutions; and partnership for the goals.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

The development of technology gives not only positive impacts but also gives negative consequences as well. Internet helps people to live their life more comfortable, especially internet users in Indonesia ranks top five among the whole world. By the internet, people can conduct electronic transaction anywhere and anytime as long as the device is connected to the internet. The usage of information and communication technology in the trade section such as electronic transaction which is meant to make life easier, on the contrary, are vulnerable to harm the consumer in many ways. CPL that has been established since 1999 and has not amended ever since is considered to be obsolete especially when the trade is conducted electronically. EITA gives security to do transaction electronically as it is the purpose of this regulation. Where CPL defines consumer protection as consumers' protection shall be every effort made to guarantee legal certainty aimed at protecting consumers. However, under Article 10(1) mentions that any business actor who conducts electronic transaction may be certified by trustworthiness certification bodies. The word "may" cause the uncertainty of consumer protection while the purpose of this article is specifically to protect the consumer. Based on these two regulations, it already can be concluded that every effort to protect consumers still have not been made while trustworthiness certification which has the purpose to protect consumers is not obligatory. Furthermore, it does not correspond with the principles of consumer protection which are: benefit, justice, balance, security and safety, and legal certainty.

With the ease of the transactions on the internet, people are no longer needed to communicate with one another to conduct transactions electronically. In which at the same time can give consumers disadvantages. The absence of communication between seller and buyer in the e-commerce transaction cause some

problems concerning consumer protection. Since consumers as the buyer do not communicate with the seller, they may not know essential information about the seller such as the identity. Another important information they may not know are the products or services they desire to purchase, whether it will meet their expectations as it is established based on the way it is advertised. Consumers are most likely to be harmed in electronic transactions. To complete the online order, they have to put their personal information (e.g., name, address, phone number, and credit card data). There is no protection for the personal data they input and either the payment is through credit card or transfer the money to seller's bank account, both carry the same risk which the seller may not deliver the goods or send the wrong one. Consumers have the right to be secured, informed, heard, and to choose. Conventional transactions which require buyers and sellers to meet face to face still make it more possible for the rights of consumers to be achieved, while in the electronic transactions things become more difficult when buyers and sellers do not meet and resulting consumers not know anything about sellers. This current situation creates a lack of confidence in consumers to trade electronically; on the other side, economic growth in a country is influenced by its national trade. As it is stated that to conduct electronic transaction business actors shall act in good faith, still no one can guarantee that the harm of consumers can be prevented. Government's role in protecting consumers is still limited to the conventional way of transactions instead of electronic transactions since the regulation itself does not give enough protection for consumers who conduct electronic transactions.

Under EU trustmark is not obligatory, but they have set the regulations regarding the utilization of trustmark and the enforcement of trust services. Thus, it has been established much trustmark company and it is being supervised by the Member States. Both trust services in the EU and Indonesia are operated by private institutions and monitored by the government. While in the EU it has the enforcement and liability of trust services, it does not have that kind of regulation in Indonesia jurisdiction. Qualified trust services which are supervised by the government give trustmark to those who fulfill the requirements, after obtaining the trustmark business

actors shall comply with the code of conduct to maintain the trustmark on their websites. Trustmark guarantees that particular websites have complied with the security requirement. Therefore, if there is any dispute occurs, consumers may contact the trust service or the business actor directly since trustmark allows people to recognize their identities such as address and phone number. Member States can take the qualified status of trust services when they no longer comply the regulations and trust services can revoke the trustmark from business actors' websites when they breach the code of conduct made by trust services. The liability of qualified trust services during the occurred damage is only to the extent of the code of conduct. Further than that, business actors shall be liable.

By obliging the trustworthiness certification to be obtained by every business actor as the requirement to conduct the business electronically, its certificate will serve the purpose of consumer protection as accordance with the regulation and create the consumer confidence. Trustworthiness certification protects consumers by establishing online trust and business transparency since its requirements to be obtained are business actors shall provide their correct data of themselves and the transparency of specific business activity. When the confidence of people are established through online trust, one of the Sustainable Development Goals (SDGs) can be achieved which is ensuring the sustainable consumption and production patterns. People are no longer lack of trust; therefore, the practice of e-commerce can be conducted in a good manner so it will help the economic growth of the country. The absence of trustworthiness certificate results in consumers concerns of who will take responsibility when there is something wrong happens. The existence of trustworthiness certification makes it clear since the liability will fall either on the trustworthiness certification bodies or business actors.

5.2 Recommendations

Based on the research of this paper, the author recommends that to fulfill the definition of consumer protection under CPL and to create the consumers' confidence by giving another protection. First, EITA Article 10(1) shall be amended from

“Any business actor who conducts electronic transaction may be certified by trustworthiness certification bodies.” to be “Any business actor who conducts electronic transaction must be certified by trustworthiness certification bodies.”. Following the amendment, business actors who obtain the trustmark shall follow the code of conduct or else trustworthiness certification bodies will revoke the trustmark certificate. Details of liabilities of each party and sanctions when the breach occurs shall be made to follow the amendment as if only the article is amended since it cannot be enforced when it does not have the legal enforcement. EU has set good examples of establishing the regulations regarding trust services even though it does not require trustmark to be compulsory. On the other hand, by the fact that there are no countries that require trustmark to be obligatory, still, Indonesia has the stronger needs to make it so. It has been mentioned before that many Indonesian internet users are lack of knowledge; thus they do not seem aware of consumer protection especially during internet transactions. Amendment of EITA Article 10(1) is necessary to protect consumers despite their awareness regarding their own interest. At last, since both trust services of Indonesia and EU are operated by the private institution, it can be followed the details of liabilities of each party, the requirements to be the qualified trust services, and government’s role for the implementation concerning the enforcement of the amendment.

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