THE IMPORTANCE OF CONSUMER RIGHTS PROTECTION ON E-COMMERCE IN INDONESIA


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CHAPTER 1

INTRODUCTION

1.1 Background

According to the Organization for Economic Cooperation and Development (OECD)\(^1\), electronic commerce or e-commerce transaction can be defined as:\(^2\) “The sale or purchase of goods or services, whether between businesses, households, individuals, governments, and other public or private organizations, conducted over the internet.”

From the perspective of actors involved in the e-commerce activities, there are several categories of e-commerce:\(^3\)

1. **B2B**, or Business to Business. In this category, the provider and purchaser of the products or services are both business entities.

2. **B2C**, or Business to Consumer. In this category, the purchaser of products or services is a regular consumer.

3. An emerging category of e-commerce, facilitated by the flexible nature of the internet is **C2C**, or Consumer to Consumer. In this category, consumers could directly provide or

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\(^1\) [http://www.oecd.org/](http://www.oecd.org/)


purchase products or services to other consumers, facilitated by online services such as eBay.com.⁴

E-commerce is convenient for consumers because it brings several benefits. First, e-commerce is open for 24 hours a day, 7 days a week, even for holidays and for almost any location in the world. Second, performing an e-commerce transaction means that consumers would have more choices on what products they wanted to purchase. Another benefit is that many suppliers from all around the world are offering varieties of products and services. Moreover, since consumers can obtain diverse information including the information about prices, hence, they also can compare the price from different suppliers.⁵

However, there are also some disadvantages in performing e-commerce activities, especially for the consumer. First, there is no human interaction; a consumer cannot directly interact in a face to face manner with the seller. This could be a problem for people that would like to do a direct consultation about the product before they made their purchase.⁶ Second, if consumers are not satisfied with the goods that they purchased, then they are allowed to return them, however, returning goods is sometimes not an easy task.⁷ Another disadvantage is fraud that might happen to any consumer, for instance, a consumer has paid but the goods failed to arrive at his premises.⁸

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⁷ Ibid
⁸ Ibid
Another issue is the product that consumer want to buy might be out of stock, which happened quite often and is not unusual.9

From a legal perspective, regulations surrounding e-commerce intersects several different fields of law such as contract law, consumer protection legislation, data protection legislation, intellectual property law, criminal law, telecommunication or media legislation, administrative law, tax law, and so forth.10 The existence of e-commerce also cannot be separated from the role of the numerous information and communication technologies that support it. Many countries around the world are now able to adopt these technologies and integrate e-commerce into their society, potentially increasing trade efficiency at the global scale..11 This widespread adoption also means that developing countries could use e-commerce to participate better in the global economy. As a consequence, in the last two decades e-commerce has significantly increased in developed countries and subsequently in developing countries as well.12

The proliferation of internet and its increasing usage in developing countries means that e-commerce is also having an increased impact in developing countries. Indonesia is one of the examples of developing countries where e-commerce activities are experiencing high demands from its society. For the past ten years, Indonesia has experienced very strong economic growth, growing by 66% between 2000 and 2010 and achieving third highest growth rate in the world.

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9 Ibid
after China and India. This strong economic growth is also correlated with the rise of Indonesian middle class, which is projected to grow from 74 million to 141 million in 2020. The Indonesian internet penetration is also projected to grow by 20% annually, and expected to reach 100 million users by the year 2016. Combined, the above factors mean that the e-commerce activities in Indonesia are poised to grow significantly within the next several years.

Nevertheless, several factors could potentially impede the growth and adoption of e-commerce in the Indonesian society. The existing legal framework of e-commerce in Indonesia does not cover several crucial elements such as consumer rights protection during and after the e-commerce transactions. There is also a distinct lack of public outreach by the government in order to educate the public about the existing legal regulation governing e-commerce. This lack of public outreach causes the majority of the population to be unaware of the existence or misunderstand e-commerce regulation. These factors combined cause a lack of trust in the general population because there is a lack of understanding regarding who would be held accountable for possible losses during electronic commerce transactions, and which legal framework that the public could use in an effective manner to uphold their rights when electronic commerce fraud occurs. This lack of trust discourages a large portion of the Indonesian consumers from conducting e-

The current regulations that exist for electronic commercial activities are the Law of the Republic of Indonesia Number 11 of 2008 concerning electronic information and transactions or Electronic Information and Transaction Act (EITA), and Government Regulation of the Republic Indonesia Number 82 of 2012 concerning electronic system and transaction operation (GRESTO). In the hierarchical terms, the regulation that took higher precedence is the Law Number 11 of 2008, followed by the lower precedence Government Regulation Number 82 of 2012. According to these regulations, there is no specific Article that regulates consumer rights protection in terms of e-commerce activities.

Even though there is one regulation called Indonesian Law Number 8 of 1999 concerning Consumer Protection or Consumer Protection Act (CPA) that regulates consumer protection, in practice this regulation is considered not sufficient enough in terms of providing sufficient consumer rights protection on e-commerce activities.

Both the Law and the Government Regulation are meant to help Indonesians in adapting to the development of e-commerce. Even though the Indonesian internet users’ adoption rate on internet-based social media is breathtakingly quick, the adoption rates for online shopping are still lagging behind.\footnote{Joyce Huang. ‘Lessons about Indonesia from Startup Asia Jakarta 2012’ SGE Entrepreneurs, June 11 2012 from http://sgentrepreneurs.com/2012/06/11/lessons-about-indonesia-from-startup-asia-jakarta-2012/ accessed June 11 2013}

Meanwhile in the European Union (EU), a regulatory framework for everyone that participates in e-commerce already exists in the form of the Directive 2000/31/EC on certain legal aspects of
information society services, in particular electronic commerce, in the Internal Market or usually called E-Commerce Directive. Also still relevant is Directive 97/7/EC on the protection of consumers in respect of distance contracts or Distance Selling Directive that regulates selling activities, including services and products, to consumers without face-to-face contact.\textsuperscript{18} These Directives are currently in force and work concurrently to regulate and facilitate e-commerce activities in the internal European market.

Since the EU Directives have been proven to be effective in regulating the e-commerce market in the European Union, it stands to reason that there are valuable lessons from the EU E-Commerce and Distance Selling Directive that Indonesia could adopt in order to augment its e-commerce regulation. For this purpose, this thesis will discuss the similarities and differences between the Regulation that regulates e-commerce in Indonesia, the E-Commerce and the Distance Selling Directive of the EU, and identifies the possible improvements that Indonesia could adopt from the E-Commerce and the Distance Selling Directive of the EU regarding consumer rights protection.

In addition, this thesis will be focused on business-to-consumer (B2C) commerce and on consumer-to-consumer (C2C) commerce, since these types of commercial activities are the ones that are more commonly used by regular consumers.

1.1 Research Question

The research question of this thesis is: What are the similarities, differences, and possible improvements that Indonesia could adopt when comparing its regulation on electronic commerce

regarding consumer rights protection with the protection provided by the EU directives on electronic commerce? In order to achieve the objective outlined above, the research question is broken down into several sub questions:

1. What are the factors that deter Indonesian consumers’ willingness to carry on their commercial activities in cyberspace, and how do these relate to the electronic commerce consumer rights protection in the Indonesian regulatory framework?

2. What is the regulatory extent of the consumer rights protection provided by electronic commerce regulations in Indonesia? And what is the regulatory extent of electronic commerce consumer rights protection in the European Union?

3. What aspects of European Union regulations about electronic commerce consumer rights protection can be adopted by the Indonesian government in order to mitigate the factors found in sub question 1?

1.2 Methodology

The methodology of this thesis is to perform a comparative legal study between the Indonesian Law Number 11 of 2008 concerning electronic information and transactions, the Indonesian Government Regulation Number 82 of 2012 concerning electronic system and transaction operation, Indonesian Law Number 8 of 1999 concerning Consumer Protection and the EU E-Commerce Directive 2000/31/EC and the Distance Selling Directive 97/7/EC. There are bound to be several similarities between these regulations, since the drafting of the Indonesian Act takes as its reference several international provisions and principles, including the European Union
Electronic Commerce Directive. In spite of this, several inevitable differences also exists due to the difference in the European society and the Indonesian society.

1.3 Thesis Structure

To answer the central research question and the three sub-research questions, the second chapter of this thesis will discuss the historical background and the current situation of the Indonesian regulation on e-commerce. In this chapter, the factors that deter Indonesian e-commerce consumers’ willingness in doing e-commerce activity and the relationship between the factors and consumer rights protection will also be discussed. In the third chapter, the regulatory background and Directives of the European Union on e-commerce will be analyzed. This chapter also presents the articles from the EU Directives related to the consumer rights protection and the implementation of these articles in e-commerce activities in the EU. The fourth chapter will perform comparative analysis between Indonesian and European Union e-commerce law. This chapter also discusses whether E-Commerce markets in the EU have similar challenges when compared to the Indonesian market, taking into account the impediments discussed in subchapter 2.4. The possible regulatory approaches that Indonesia could adopt from the European Union and apply to its legal framework will also be presented in this chapter. Finally, in the fifth chapter, all of the conclusions from all the previous chapters are evaluated in order to answer the main research question of this thesis, and recommendations are given for the Indonesian government to improve the current Indonesian legal framework regarding e-commerce.
CHAPTER 2

INDONESIAN ELECTRONIC COMMERCE REGULATIONS

2.1 Historical Background of Electronic Commerce in Indonesia

The history of e-commerce in Indonesia began in 1996, with the launch of Indonesian “online malls” from two pioneering providers of online shopping.\(^{19}\) Even at this early stage, the emergence of e-commerce was already deemed to be beneficial to many parties, including consumers, producers, and retailers.\(^{20}\) From the start of e-commerce development in Indonesia, many Indonesians were still unaware of the concept and technology behind e-commerce. There were various reasons behind this lack of awareness. The first and foremost reason was because the telecommunication infrastructures in Indonesia, such as cable or wireless infrastructures, were still limited in terms of quantity and interconnections.\(^{21}\) This reason, coupled with Indonesia’s archipelagic nature and its considerable vastness, means that the cost to increase the internet penetration in Indonesian population was very expensive. In turn, this caused the cost of internet usage for the end user to be expensive, reducing the accessibility and popularity of the internet during the early stages of

\(^{19}\) Yuda Ramadani, ‘Prospek E-commerce di Indonesia dan Dunia’ (March 6 2013) http://yudaramadani.blogspot.nl/2013/03/prospek-e-commerce-di-indonesia-dan.html accessed July 11 2013 It stated that “With the establishment of Dyvia.com Intrabum or D-net as a pioneering e-commerce provider called online mall was able to accommodate about 33 stores and selling a wide range online merchants and products ranging from food, accessories, clothing to furniture”.

\(^{20}\) Ibid.

e-commerce development in Indonesia. This expensive nature also made online shopping more expensive compared to traditional shopping.

The second reason was because there were a relatively small amount of the Indonesian population that understood the advantages and benefits of using the internet itself. A large portion of the population, due to the lack of education, governmental outreach, and private sector marketing about the benefits of internet, did not understand that e-commerce was one of the potential usages of internet.

Combination of these two reasons impeded the early development of e-commerce in Indonesia. As time progressed, the telecommunication infrastructure in Indonesia, stimulated in part due to several public service obligation regulations enacted by the government of Indonesia, showed considerable improvement. Moreover, this improvement of telecommunication infrastructure managed to lower the cost barrier in accessing the internet for a large number of the Indonesian population. Nevertheless, the current electronic commerce situation in Indonesia is still less than ideal, as will be shown in the following subchapters.

2.2 Situation of Electronic Commerce in Indonesia

Within the past decade, the Indonesian people have increasingly used the internet as a means to support their daily activities. Recently, due to the rapid improvement of the internet infrastructure and its adoption in Indonesia, the usage of internet has also begun to affect online
transactions such as tax payments, registration for new college students, applying for the electronic KTP (national identification card), and e-commerce activities (sales and purchases of services).23

The increasing internet penetration among the Indonesian population also affects the growth of e-commerce in Indonesia. The Indonesian Internet Service Provider Association (Asosiasi Penyelenggara Jasa Internet Indonesia or APJII)24 expects that at the end of 2013, the total number of internet users in Indonesia will grow to 80 million users, compared to the 53 million users at the end of 2012.25 The increase of approximately 30 million internet users per year could make the e-commerce market more widely accessible. In other word, e-commerce has the potential to become more popular every year in Indonesia.

Currently, e-commerce activities are highly demanded by the Indonesian middle-class. Abundance of well-paying employment opportunities in Indonesia, combined with increasing consumerism, are part of the reasons behind the increase of the middle-class population in Indonesia. There are currently approximately 74 million middle-class people in Indonesia, and this number will double by 2020, to roughly 141 million people.26 This doubling means that during the next seven years, between 8 to 9 million people will enter the Indonesian middle class each year.27 The reason why the Indonesian middle-class started to enjoy online shopping is

24 http://www.apjii.or.id/v2/
26 Vaishali Rastogi and others (n 14)
27 Ibid
because the benefits that it provides, including saving valuable time. Due to the traffic congestion that happens in most big cities in Indonesia, e-commerce or online shopping becomes the best option to avoid time-consuming procurement of consumer goods for middle-class consumers in Indonesia.\textsuperscript{28}

Moreover, the Indonesian geographical situation also affects the growth of e-commerce activities in Indonesia. The large area of Indonesia highlights both the potential and challenges faced by e-commerce in Indonesia. Large distances between cities and regions in Indonesia means that for consumers living in remote areas, the supply chain required to distribute the goods that he or she desires is lengthy and complicated, with multiple parties along the way taking profit cuts before the goods arrive for the consumer. In some remote parts of Indonesia, the price of goods could be easily inflated to five times the original supplier’s price.\textsuperscript{29} With e-commerce, the lengthy supply chain could be cut and the consumer could purchase the desired goods directly from the supplier.

On the other hand, having a large area means that the cost of logistics that is inevitably needed for e-commerce sellers in sending their goods to the consumers becomes more expensive, especially since not every city in Indonesia has a good transportation infrastructure. Thus, it limits the sellers to deliver their goods only to the consumers that reside in certain major cities.

\textsuperscript{28} ‘Indonesia, Japan: Daily Shopping E-Commerce Site Sukamart.com Launches in Indonesia - Sukamart Helps customers save time through delivery of household products to their home or office’ (Albawaba 2012) http://www.thefreelibrary.com/Indonesia,Japan+%3A+Daily+Shopping+E-commerce+Site+Sukamart.com...-a0314691690 accessed August 19 2013

Additionally, there are several other ongoing issues related with e-commerce in Indonesia. One of the factors that could potentially impede the growth of e-commerce is that the existing regulations do not sufficiently cover all elements related with e-commerce. One example of such lack of coverage concerns the area of consumer rights protection. Even though Indonesia has an existing regulation that govern consumer protection in general, Indonesia does not have consumer rights protection regulations that specifically govern e-commerce.

Even for traditional or offline commerce, many Indonesian consumers are unaware that the government is protecting their rights as consumers. This lack of awareness is supported by a survey\(^\text{30}\) from the Indonesia’s National Consumer Protection Agency (Badan Perlindungan Konsumen Nasional)\(^\text{31}\), where approximately 60% of the respondents admitted that they were not aware of their rights as a consumer.\(^\text{32}\) Another finding from the same survey revealed that only 35.8% of respondents were aware that, as consumers, they have the right for advocacy. Moreover, only 11.3% of respondents were aware that their rights are protected under the law.

As for online commerce, another recent survey from the Indonesian Ministry of Communication and Informatics showed that 74% of Indonesian online consumers reported some degree of concern about online shopping.\(^\text{33}\) Among the concerns found by the survey, the number one concern is regarding the quality of the goods that they receive (46%), while the second leading

\(^{\text{30}}\) The survey was conducted in January 2012 to 1000 consumers in different cities in Indonesia. The survey showed that 35.8% people are aware with their rights as a consumer and only 11.3% among them that knows that their rights are protected by Law. See [http://citraindonesia.com/ini-hasil-survey-bpkn-2011/](http://citraindonesia.com/ini-hasil-survey-bpkn-2011/)

\(^{\text{31}}\) [http://bpkn.go.id](http://bpkn.go.id)


\(^{\text{33}}\) The Ministry of Communication and Informatics of Indonesia, ‘Potret Belanja Online di Indonesia’ (2013) available at [http://publikasi.kominfo.go.id/bitstream/handle/54323613/981/Potret%20Belanja%20Online%20di%20Indonesia.pdf?sequence=1](http://publikasi.kominfo.go.id/bitstream/handle/54323613/981/Potret%20Belanja%20Online%20di%20Indonesia.pdf?sequence=1) accessed November 8 2013. Survey was made from the online consumers who are domiciled in three major cities in Indonesia. The total of the respondents of this survey was 466 people.
concern is whether the purchased goods would arrive at their premise or not (39%). Moreover, 37% of the respondents agreed that online shopping is less secure than traditional shopping, while only 5% agreed that online shopping is more secure than traditional shopping. Among those who agreed that online shopping is less secure than traditional shopping, 70% stated that it is because in traditional shopping, they could physically check the goods before they finalize the transaction. Meanwhile, 64% stated that it is because they can be sure that the goods would be immediately received after they finalize the transaction. Another finding from the survey is that approximately one out of three respondents had encountered some problems while shopping online. The top online shopping problems found by the Indonesian consumers were the low quality of the goods that they received (46%), goods that ended up being delayed or undelivered (46%), and goods that were damaged in transit (32%). Faced with the aforementioned problems, the majority of consumers (96%) opted to complain to the sellers instead of contacting the police or other authorities. Even more unsettling, the survey found out that approximately one out of three problems ended up being unresolved. An interesting finding that underscores the problem of consumer trust in Indonesian e-commerce is the very small percentage of respondents (0.5%) that preferred credit cards as their payment method due to the potential for credit card fraud; most e-commerce consumers in Indonesia preferred to use manual bank transfers or cash-on-delivery instead.

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34 Ibid
36 Ibid
37 Ibid
38 Ibid
39 Ibid
40 Ibid
41 Ibid
2.3 Current Regulations

Currently, Indonesia has two regulations that cover all aspects related with information and technology, including e-commerce. The first regulation is the Indonesian Law Number 11 of 2008 concerning Electronic Information and Transaction or Electronic Information and Transaction Act (EITA) and the second is Government Regulation Number 82 of 2012 concerning Electronic System and Transaction Operation (GRESTO).

Since Indonesian consumer rights protection is regulated under Indonesian Law Number 8 of 1999 concerning consumer protection (CPA), the discussion regarding this regulation will also be elaborated in this chapter.

2.3.1 Indonesian Law Number 11 of 2008 concerning Electronic Information and Transaction (EITA)

EITA was designed in 2003 by the Ministry of Communications and Information Technology. After a lengthy process that involved several academic and governmental parties, this Act was passed in 2008 and the manuscript was signed by the President of the Republic of Indonesia.

The President issued this Act with the goal to increase the welfare of Indonesians, both living inside the country and abroad, and in order to give Indonesian citizens a sense of security in conducting electronic transactions. At the time when the act was passed, EITA was expected to

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42 “Perjalanan Panjang Undang-Undang No. 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik” (Cakrawala Hukum) http://m.bi.go.id/NR/rdonlyres/66F88341-08DD-4676-BFD4-2BF5E5CA4502/14418/cakrawala_hukum1.pdf accessed August 10 2013

43 Ibid
reduce the impact of cybercrimes and every action related to these crimes would be regulated directly by the EITA.

EITA was not merely established to regulate e-commerce activities, but also regulates and accommodates numerous cyber law materials such as electronic evidences, privacy, jurisdiction, intellectual property and including criminal offense related to these materials. Due to the large amount of materials that is being regulated in EITA, this regulation is considered too general in regulating electronic transactions.

Electronic transactions are discussed in Chapter 5 within the Articles 17 - 22. To begin with, Article 17 elucidates that parties performing electronic transactions (e.g. sellers and consumers) are obliged to act in good faith during the transactions.\(^4^4\) Every electronic transaction stated in electronic contracts\(^4^5\) is binding to the sellers and consumers.\(^4^6\) Parties shall have the power to choose the applicable law for the international electronic transactions that they enter. Parties that conduct electronic transactions must use the electronic transaction systems as agreed by both of them.\(^4^7\) Electronic Transactions shall occur at the time the transaction offers are sent by senders or sellers and have been received and accepted by recipients or consumers.\(^4^8\) Electronic Transactions shall occur at the time of the agreements between parties, which can be in the form of, inter alia, verification of data, identity, personal identification number (PIN) or password.\(^4^9\)

\(^{4^4}\) EITA, Article 17
\(^{4^5}\) Electronic contract is an agreement between parties that is being entered into by means of electronic systems.
\(^{4^6}\) Article 1 (17) EITA
\(^{4^7}\) EITA, Article 18
\(^{4^8}\) EITA, Article 19
\(^{4^9}\) EITA, Article 20
\(^{49}\) Ibid
Sellers or consumers may conduct electronic transactions in person, or by his/her proxy, or by electronic agents and it is advisable that “proxy” authorization is stated in a letter of attorney. With regards to the settlement of disputes that might arise from e-commerce activities, Article 39 stipulates that consumers can settle their issues through the out-of-court systems or alternative dispute resolution bodies as long as it is still in accordance with the other applicable provisions. Based on the elucidation of the above articles, and observing the implementation of the Act, Indonesian government decided that it is necessary to have additional rules regarding electronic transaction in the form of GRESTO. These additional rules are required because EITA is too general to govern e-commerce activities in Indonesia.

2.3.2 Government Regulation Number 82 of 2012 concerning Electronic System and Transaction Operation (GRESTO)

As mandated by Law No. 11 Year 2008 on Information and Electronic Transactions, the President of the Republic Indonesia on October 12, 2012 signed into effect the Government Regulation No. 82 Year 2012 on Operation System and Electronic Transactions. This regulation is derived from the EITA and was made to accommodate elements of “electronic transactions” that were considered to be in need of further explanations and not yet covered by EITA. In general, the regulation, which contains 90 articles, governs the following matters:

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50 Electronic Agent is an automated electronic system that is used to initiate an action according to certain Electronic Information, which is controlled by persons. Article 1(8) EITA
51 EITA, Article 21
52 EITA, Article 39
54 GRESTO, Article 2
a. Electronic System Operation. Electronic system operation is any person, state agency, business entity, and community that provides, manages, and/or operates electronic systems for its user, either individually or collaboratively with other parties, and either for its own interest or other parties’ interest.\textsuperscript{55} Implementation of electronic systems is conducted by the electronic systems operators, which could be done for non-public service and public service.\textsuperscript{56} Electronic system operators for public service is done by government agencies that operate electronic systems of public service to the community. For instance, electronic systems used for taxation, customs, immigration, banking institutions, educational or any other electronic system that organizes public services. Meanwhile, an electronic systems operator for a non-public service is a private company which organizes electronic systems for the internal needs of their company.

b. Electronic Agent Operator. GRESTO does not describe the definition of electronic agent operator, but rather describes that electronic agents operators must register their commercial activities to the Ministry of Communications and Information Technology before being able to obtain the operating permission.\textsuperscript{57} An example of an electronic agents’ operator is the Electronic Data Capture (EDC) provider.\textsuperscript{58}

c. Electronic Transactions Operation is a series of electronic transaction activities conducted by the sender and receiver by using the electronic system.\textsuperscript{59}

\textsuperscript{55} GRESTO, Article 1 (4)
\textsuperscript{56} Sekretariat Kabinet Republik Indonesia (n 53)
\textsuperscript{57} Rudi Rusdiah, ‘PP 82/2012, UU ITE dan Wajib Daftar ke Menkominfo’ (December 13 2012) \url{http://rusdiah.blogspot.nl/2012/12/pp-822012-uu-it-dan-wajib-daftar-ke.html} accessed August 19 2013
\textsuperscript{58} EDC systems are computerized systems designed to collect and manage clinical and laboratory data in an electronic format. \url{http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3049639/}
\textsuperscript{59} GRESTO, Article 1 (14)
d. Electronic Signature is a signature that consists of electronic information attached to, associated, or linked with other electronic information that is used as a means of verification and authentication.  

e. Electronic Certification Operation. All the electronic system operator must have an electronic certificate that is issued by the electronic certification operator.  

f. Reliability Certification Agency is an independent agency established by a recognized, authorized and supervised professional by the government with the authority to audit and issue a reliability certification for business entities who operate electronic transactions.  

g. Domain Name Management. Domain name is an address or identity of state administrators, business enterprise, or society which should be managed by the government and/or society. Procedures regarding the use of domain names are regulated in Article 73 to Article 83.  

GRESTO does not specifically address consumer rights protection. However, GRESTO does cover the minimum requirements for an electronic contract, which coincidentally covers the consumer’s right to obtain information. Article 48 (3) states that sellers are obliged to provide certain information to the consumer during the creation of an electronic contract. These information are:

- The identity of sellers and consumers
- The object and the specification of the goods
- The costs

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60 GRESTO, Article 1 (19)
61 GRESTO, Article 59
62 GRESTO, Article 1(24)
63 GRESTO, Article 1 (28)
- The cancellation procedure
- The provision which entitles the aggrieved party to be able to return the goods and/or request a replacement product if there is a hidden defect
- The choice of law that can be used in resolving the problems.

Chapter 3 Article 38 (1) also states that an electronic agent operator is obliged to take into consideration existing consumer protection in accordance with the provisions of the law. The existing provision that regulates consumer right protection is Indonesian Law Number 8 of 1999 concerning Consumer Protection (CPA).

2.3.3 Indonesian Law Number 8 of 1999 concerning Consumer Protection (CPA)

In Indonesia, consumer protection rights are regulated by Indonesian Law Number 8 of 1999 concerning Consumer Protection (CPA). The intended focus of this act is to regulate consumer protection during conventional transactions. Since, with regards to e-commerce consumers, Indonesia does not yet have any particular regulation that is specifically designed to provide e-commerce consumer protection, CPA is considered to be the closest provision in governing the e-commerce consumer protection in Indonesia. The aims of the Act, as described in Article 3, are:64

1. To increase awareness, ability, and consumers independence to protect themselves.
2. To raise the dignity and self-esteem of consumers by means of protecting them from the negative excess of consumptions from the purchased goods and/or services.
3. Empowering consumers to choose and claim their rights as a consumer.

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64 CPA, Article 3
4. To improve the consumer protection system that contains legal certainty elements and transparency of information and access to obtain information.

5. To cultivate awareness among business entities regarding the importance of consumer protection, in order to foster honest and responsible attitudes in their business practices.

6. To improve the quality of goods/services that ensures the continuity of the production of goods and services, health, comfort, security and safety of consumers.

When performing e-commerce activities, consumers are in a vulnerable position and generally feel that their rights are being violated. Within the context of e-commerce, relevant consumer rights according to Article 4 of CPA are:

1. Rights to obtain convenience. Consumers should be able to comfortably obtain goods or services without being hampered with unnecessary hindrances. For example, consumers should be able to comfortably and easily access detailed information regarding the products that they want to purchase or the company that they are doing business with.

2. Rights to obtain security and safety in consuming goods or services. When performing e-commerce, consumers should be guaranteed that their transactions are secure. For instance, when consumers made their payment, a digital certificate could

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66 Digital certificate is an electronic file that is used to uniquely identify people and resources over networks such as internet. It is also enables secure, confidential communication between two parties. Available at http://www.entrust.net/ssl-resources/pdf/understanding_wtls.pdf
be presented to make sure that their payment is going to be processed by the intended sellers, not by a fraudulent party.

3. Rights to obtain correct, honest and explicit information regarding the condition of the goods that the consumers purchased. Since the consumers are not able to see the goods directly but rather from an intermediary website, there are possibilities that the sellers are not giving the right information regarding the goods.

4. Rights to complain. Consumers should be able to complain to the sellers of the goods or services that they purchase. However, since in an e-commerce transaction both the consumer and the seller does not have a physical meeting, any complaint that the consumer made will need to be conveyed via e-mail or telephone. Thus, the consumers are facing the possibility of online shops hiding their contact information in order to make it difficult for consumers in sending their complaints.

5. Rights to obtain protection and mediation in handling and solving frauds. Solving frauds related with e-commerce is not easy in Indonesia. Consumers were faced with difficulties in reporting cases of e-commerce frauds, and the law enforcement was faced with difficulties in tracing and collecting evidence of the frauds. Recently, the Indonesian police introduced an online reporting tool in order to streamline the red tape involved in reporting e-commerce frauds, but the tool is not widely known and it remains to be seen whether the online tool would be effective or not in assisting the fraud victims.\footnote{\textit{Anda Korban Korban Kejahatan Online, Lapor ke cybercrime@polri.go.id}‘ (Tribun Jakarta, February 27 2013)\texttt{http://www.tribunnews.com/metropolitan/2013/02/27/anda-korban-kejahatan-online-lapor-ke-cybercrimepolri.go.id} accessed August 17 2013. It stated that the national police provide a special email to receive a report on cybercrime cases, including e-commerce fraud, anyone could email to cybercrime@polri.go.id}
All of these consumers’ rights are important in order to establish trust between sellers and consumers when conducting e-commerce activities.

In resolving disputes faced by e-commerce consumers, the CPA does not differentiate the dispute resolution procedure for e-commerce transactions with the procedure for conventional commercial transactions. The CPA does not provide coverage for special conditions that are inherent in e-commerce transactions, such as taking into consideration the inability for consumers to directly identify, see, or touch the goods that they are ordering through electronic means.

In terms of out-of-court settlement disputes, Article 49 of the CPA stipulates the establishment of Consumer Dispute Settlement Body or Badan Penyelesaian Sengketa Konsumen, which is empowered to act as a mediator and arbitrator for possible disputes between consumers and sellers. 68 However, since this settlement body was initially designed to handle disputes on traditional commercial transactions, it is not effective for handling disputes on e-commerce transactions. For instance, when a consumer wants to report a disputed transaction, he or she is required to provide the address of the seller along with the time and place of the transaction before the settlement body could start its investigation. Within the context of e-commerce transactions, both requirements are not applicable since the consumer does not directly interact with the seller, the seller may falsify or hide his or her physical address, and the transaction did not take place in a physical location. Moreover, in practice the out-of-court settlement body is often overwhelmed with mediation requests from the consumers, and its effectiveness in dispute mediation is doubted. 69

68 CPA, Article 49 (1)
Another weakness from CPA in terms of regulating e-commerce consumer protection is that CPA is limited to protecting the e-commerce consumer activities within the territory of Indonesia. This means that CPA only protects e-commerce consumers, sellers, or business entities that reside in Indonesia. If either party does not reside in Indonesia, for instance if the seller resides in Singapore, then the consumer is not protected by the CPA.

Due to the various weaknesses of the CPA with regards to handling e-commerce dispute resolutions, the CPA can be considered as less effective in resolving disputes in e-commerce transactions.

2.4 Impediments for Electronic Commerce Adoption

The previous subsections cover several issues related to impediments that could hamper the adoption of e-commerce in Indonesia, especially in relation to existing e-commerce regulations in Indonesia.

1. The existing regulations do not properly cover the issue of consumer rights protection for e-commerce activities. EITA and GRESTO are too generic for e-commerce consumer protection, while CPA is not focused on consumer rights protection in the context of e-commerce. Based on the report from the Indonesian Consumers Organization (Yayasan Lembaga Konsumen Indonesia or YLKI)\(^70\), there are an

\(^{70}\) [http://www.ylki.or.id](http://www.ylki.or.id)
increasing number of Indonesian e-commerce consumers that support the need of having a regulation for e-commerce consumer protection.71

2. Lack of trust. Having sufficient assurance from the electronic commerce provider is very important for consumers and could be one of the top reasons behind Indonesian consumer’s hesitation in doing e-commerce activities. Consumers are still reluctant when coming to the issue of online payment. This reluctance is caused due to credit cards being the sole method of payment accepted by most online stores72, while credit card fraud is a problem that often occurs in Indonesia and has been recognized as the main problem in the Indonesian online payment system.73

3. The lack of awareness from Indonesian consumers regarding the supporting technology behind ecommerce. Not all Indonesian people are technologically literate and understand how to conduct online transactions, thus, conventional shopping is still the main choice for them.74

2.5 Conclusion

To conclude this chapter, historically e-commerce in Indonesia shows a lot of potential but it was impeded by the lack of infrastructures. Now that the infrastructures are improving, e-commerce activities are booming in Indonesia.

72 Arno R. Lodder (n 4) p. 5
74 Handi Irawan D, ‘Karakter dan Perilaku Khas Konsumen Indonesia’ (Marketing.co.id) http://www.marketing.co.id/karakter-dan-perilaku-khas-konsumen-indonesia-2/ accessed November 8 2013
Many of Indonesian consumers became the victim of e-commerce frauds by malicious parties. Online frauds are still common in Indonesia, and unfortunately these frauds are often left unpunished. The victims are distressed because of the lack of effectiveness of the consumer protection procedures, and the complexity of these procedures. This situation caused most e-commerce fraud victims not to report their case to law enforcement, and to avoid online shopping altogether.

The above situation is linked with the lack of laws regulating e-commerce in Indonesia. EITA and GRESTO need further improvements, especially regarding consumer rights protection. Another way that could be beneficial for the Indonesian e-commerce consumer is the establishment of a more specific e-commerce consumer protection regulation.

This chapter discussed some of the weaknesses of the existing e-commerce regulations in Indonesia. However, in many other countries, there are other e-commerce regulations that have been proven successful in governing their e-commerce activities, including in the European Union. The next chapter will discuss the regulation of e-commerce in the European Union, with the aim to analyze the regulation as a source of legal inspiration for the following chapters.
CHAPTER 3

EUROPEAN UNION REGULATORY FRAMEWORK ON

ELECTRONIC COMMERCE

3.1 Background of E-Commerce Regulations in European Union

The consolidation of the European Union Countries created a large single European market that currently comprised of 28 Member States and approximately 500 million people, with each Member State initially having their own legal framework regarding online business. As time progresses, diverse regulations related either directly or indirectly with e-commerce are being developed, both by Member States and by the Community, with the goal of harmonizing the different co-existing regulations in each Member State into a single common regulation.\textsuperscript{75}

This chapter focuses on the legal framework of the European Union for e-commerce activities in Europe. Since the scope of e-commerce is wide-ranging, there are numerous EU regulations that are directly or indirectly related with e-commerce, including:\textsuperscript{76}

1. E-Commerce:
   - Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market or E-Commerce Directive.

2. Consumer Protection:


\textsuperscript{76} Siegfried Fina, ‘\textit{European Union E-Commerce Law Consolidated Legislation’}, (Manzsche Verlags- und Universitätsbuchhandlung 2008)
- Directive 97/7/EC on the protection of consumers in respect of distance contracts or Distance Selling Directive.


3. E-Signatures:


4. Copyright:


- Directive 96/9/EC on the legal protection of databases or Database Directive.


5. Conditional Access:

- Directive 98/84/EC on the legal protection of services based on, or consisting of, conditional access or Conditional Access Directive.

6. E-Money:


7. Domain Names:

- Regulation (EC) No 733/2002 on the implementation of the.eu Top Level Domain or Domain name Regulation.
- Commission Regulation (EC) No 874/2004 concerning the implementation and functions of the .eu Top Level Domain and the principles governing registration.

8. Privacy/Data Protection:


- Directive 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC or Data Retention Directive.

- Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data or Data Protection Directive.

- Commission Decision 2001/497/EC on standard contractual clauses for the transfer of personal data to third countries, under Directives 95/46/EC.

- Commission Decision 2002/16/EC on standard contractual clauses for the transfer of personal data to processors established in third countries, under Directive 95/46/EC.

9. Applicable Contract Law:

- Rome Convention on the Law Applicable to Contractual Obligations

10. Jurisdiction:

All the above legislations are general regulatory frameworks established by the EU. Based on the applicable Directives, each of the 28 Member States implemented its own national regulation. Harmonization of the diverse regulations in order to achieve a Single Market between EU Member States is important. According to the Commission, there are four principles essential for harmonization of the diverse e-commerce regulations:

1. No regulation for regulation’s sake means that the free movement of e-commerce goods and services in European Union countries might already be attainable in an effective way through two methods: the mutual recognition of national rules between Member States, and using the applicable self-regulatory codes. If these two methods are not sufficient in ensuring the free movement of e-commerce goods and services, then the Community should step in and formulate regulations.

2. Any regulation must be based on all Single Market freedoms; means that the four freedoms of movement, i.e. free movement of goods, persons, services and capital must be guaranteed within the Single Market to every e-commerce company. By putting these four freedoms of movement at the heart of the regulation, market harmonization between Member States can be achieved.

3. Any regulation must take account of business realities. When conducting e-commerce activities, sellers perform a chain of actions: establishing business, promoting, selling, delivering and financing their goods or services. Thus, in order to have a balanced and

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78 BBC NEWS on Euro-glossary ‘Single Market’ explained: “The Single Market set up four freedoms: 1) Goods: companies can sell their products anywhere in the member states and consumers can buy where they want with no penalty 2) People: citizens of the member states can live and work in any other country and their professional qualifications should be recognized 3) Capital: currencies and capital can flow freely between the member states and European citizens can use financial services in any member states 4) Services: professional services such as banking, insurance, architecture and advertising can be offered in any member states.” http://news.bbc.co.uk/2/hi/in_depth/europe/euro-glossary/1256396.stm accessed August 29 2013
comprehensive regulation for every step of the chain, every regulation needs to be holistic in governing all of these commercial actions.

4. *Any regulation must meet general interest objectives effectively and efficiently.* An example of general interest objectives is privacy or consumer protection. This principle means that every regulation related to e-commerce must satisfy privacy or consumer protection in an effective and efficient way. If such protection is not being covered by the regulation, then the Single Market for e-commerce will not develop. In addition, it could create barriers for harmonization between Member States, since each of them would like to protect the interests of their own consumers.

As briefly mentioned in principle number 3 above, there is a chain of actions in e-commerce activity that need to be covered by e-commerce regulations in the European Union in order to guarantee a single legal system for these activities in the European Community. John Dickie indicated in “Internet and Electronic Commerce Law in the European Union” that several steps are needed to cover the entire chain of actions in e-commerce activities.\(^{79}\)

1. Establishment of e-commerce companies. A harmonized establishment of e-commerce companies between Member States is needed so that there will not be any impediment in establishing cross-border providers of goods and services.

2. Promotion of goods and services by means of commercial communications, for instance, advertising, direct marketing, public relations, self-promotions, etc.

3. E-commerce transaction between consumers and sellers, regardless whether the transaction was made partially at a distance or fully at a distance.

\(^{79}\) John Dickie, (n 75) p. 5
4. Payment methods available to consumers in different Member States must be harmonized.

5. A guarantee of adequate dispute resolution systems from Community regulation is important if post-transaction disagreement happen between consumers and sellers.

Electronic commerce transactions create vast potential prospects for consumers and businesses or sellers in Europe, especially for small and medium-sized enterprises (SMEs). The increased number of consumers and sellers in performing e-commerce activities were the main reason of drafting e-commerce regulations in the European Union (EU). Since in terms of potential exposure to losses, consumers are considered to be more vulnerable than the sellers, providing common rights for consumers and establishing obligations for retailers throughout Europe is important.

The purpose of this thesis is to make a comparison between e-commerce regulations in the EU and Indonesia, and focusing on consumer rights protection. To this purpose, this chapter is going to focus on the E-Commerce Directive, which regulates e-commerce activities and its related consumer rights protection, and the Distance Selling Directive, which regulates distant contracts, e.g. contracts in e-commerce or online transactions, and put detailed obligations for sellers that protects the rights of consumers.

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80 COM (97) 157
81 Arno R. Lodder (n 4) p.4
3.2 Directive 97/7/EC on Protection of Consumers in Respect of Distance Contracts

Directive 97/7/EC on protection of consumers in respect of distance contracts or The Distance Selling Directive applies to both goods and services, where the contract is made without face-to-face contact between consumers and sellers. It also applies when consumers had no chance to look and/or touch the goods that they purchase from the sellers. Examples of commercial activities that are referred to in this Directive are commercial activities through mail order, telephone and internet shopping. In other words, in its earlier form, e-commerce in the 1990s was considered to be a form of distance contract, since consumers and sellers are not in the same physical location. The Directive covers telephone, faxes, radio, e-mail, mail order, digital TV and only extends to B2C (business to consumer) e-commerce.

Since consumers could not physically verify the condition of the goods that they purchase in a distant contract, the EU government was concerned that consumers could be put in a more vulnerable position than sellers. Hence, and in order to obtain fairness between both parties, consumer protection law is needed.

The EU legislation enacted the Distance Selling Directive in order to protect consumers, who purchase goods or services through distance communication means, in a similar position to consumers who buy goods or services in shops. Even though this Directive was not designed

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83 BERR, ‘Distance Selling (Mail Order, Telephone, and Internet Shopping) Quick Facts’ (Department for Business Enterprise & Regulatory Reform)
85 Arno R. Lodder (n 4) p.11
for an internet-based commerce, the basic purpose was similar for e-commerce or online transactions.

There are 19 Articles in the Distance Selling Directive and each Article covers different issues. The Directive provides a number of consumer rights including:  

1. Provision of comprehensive information before the purchase

When conducting e-commerce activity, the sellers and consumers are required to understand the information they should know before making a purchase or selling their goods. In Articles 4 and 5, an obligation is imposed for sellers to give certain information and details about the goods or services to consumers in order to ensure that consumers make a well-informed purchasing decision. The sellers are obliged to give accurate information to consumers, which could create transparency from both parties. The transparency between consumers and sellers is important in order to establish a sense of trust among them.  

In further elaboration, the contents of Article 4 are divided in three points. The first point discusses the information that has to be provided to consumers in creating a distance contract. The second point states that the information referred to in point one should be provided in a clear and comprehensible manner according to the principles of good faith in commercial transactions. The third point explained that the identity of sellers in shopping through telephone communications has to be clearly explained at the beginning of any conversation with the consumers.

88 Arno R. Lodder (n 4) p.14
89 Distance Selling Directive, Article 4 (2)
90 Ibid, Article 4 (3)
In addition, Article 4 (1) indicates the information that must be provided by sellers to consumers.\(^{91}\)

All the above information must be provided in a clear and understandable manner to the consumers in order to avoid vagueness between sellers and consumers. For instance, if the sellers provide their telephone number, they have to put their full telephone number including the country and city code of their telephone number.

2. Confirmation of the above information in a durable medium (such as written confirmation)

In order to fulfill a fair transaction between consumers and sellers, sellers are obliged to give written confirmation of information with regard to the goods or services purchased by consumers. Article 5 of the Directive discusses the details of this particular information. In Article 5 (1) it is mentioned that consumers must receive written confirmation of information regarding the goods or services that they purchase from the sellers. It is important that consumers have the ease in accessing the information about the identity of the sellers, and also the information on how to withdraw from the transaction. There are four additional pieces of information that should be provided to consumers at the time when the written confirmation is given: \(^{92}\)

a. The information regarding the conditions and procedures for exercising the right of withdrawal that mentioned in Article 6, including the cases referred to in the first indent of Article 6 (3).

b. A geographical address to which the consumers could address any complaints.

\(^{91}\) Ibid, Article 4 (1)
\(^{92}\) Ibid, Article 5 (1)
c. The details of any after-sales guarantees, if the sellers provide such guarantees.

d. If the contract is intended for services without any specific duration, the sellers must provide further information on how consumers could revoke the contract.

3. Cancellation rights within seven working days without justification or costs beyond those returning the goods or right of withdrawal.

Article 6 of the Directive governs the right of withdrawal for the consumers, which provides consumers with the right to withdraw their contract within at least seven working days, with the cost of returning the goods to be burdened by the consumers themselves. Limitations to the right of withdrawal are mentioned in Article 6 (3).

4. Refund within 30 days of cancellation.

Article 6 (2) states that in the occurrence of cancellations, sellers are obliged to refund all money paid by the consumers and without any charges. This reimbursement must be done as soon as possible within 30 days of the cancellation.

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According to the Article 6(3) there are six contracts exempted from the right of withdrawal:

a. Contracts for the supply of services where the performance has begun with the agreement of consumer, prior to the end of the seven working days period referred in Article 6 (1). The concept of withdrawal is not applied to the services contracts, since services cannot be returned to the degree in which they are already performed.

b. Contracts for the supply of goods and services in which its price are dependents on financial market conditions which cannot be controlled by the sellers.

c. Contracts for the supply of goods made by the consumers’ specifications or clearly personalized to the consumers’ preference, which, by reason of their nature, cannot be returned or are liable to deteriorate or rapidly expire.

d. Contracts for the supply of audio/video recordings or computer software which has been unsealed by the consumer. This could prevent consumers from copying the contents of audio/video recordings or computer software and return the original to the sellers.

e. Contracts for the supply of newspaper, periodicals and magazines. Newspaper, magazines and other periodicals are valuable only while they remain current, therefore returning such goods is prohibited, since consumers may already gained some benefits of.

f. Contracts for the supply of gaming and lottery services
5. Delivery of the goods or performance of the service must be done within 30 days of the order being placed by the consumer. Article 7 (1) obliges the sellers to execute the consumers’ order within a maximum of 30 days from the day following the day the consumers forwarded their orders to the sellers.\footnote{Distance Selling Directive, Article 7(1)} In the case where the sellers have failed to perform their end of the contract due to the unavailability of the goods that consumers purchased, Article 7(2) places an obligation upon the sellers to inform and to return any payment that consumers already made as soon as possible, within 30 days.\footnote{Ibid, Article 7(2)} Moreover, Article 7(3) points out that there are some limitations regarding the obligation of the sellers under Article 7(2). The sellers are allowed to provide the consumers with goods or services of equivalent quality and price, in other words, the sellers may select this method in order to substitute the goods or services that have been ordered.\footnote{Ibid, Article 7(3)} All of the information related with the potential delivery of substitute goods or services must be explained in a clear and comprehensible manner compliant with the Directive.

6. Protection for fraudulent use of payment cards.

Article 8 states that consumers are allowed to request the cancellation of their payment if fraudulent use has been made of their payment card and in this case their payment or money must be returned with the exact sums paid.

7. Protection from unsolicited selling

Article 9 describes that Member States must to take measures concerning the unsolicited supply goods or services to consumers without being ordered from the consumers beforehand, and where such supply involves a demand for payment.

\footnote{Distance Selling Directive, Article 7(1)}\footnote{Ibid, Article 7(2)}\footnote{Ibid, Article 7(3)}

The Distance Selling Directive was established far before e-commerce technology was established. The purpose of this Directive was designed to make distance buying or online transaction as close as possible to the experience of going into a shop. In 2006, The Commission stated that this Directive might require adaptations to cope with the new technologies on conducting commercial activities, for instance online auctions. Even though the Directive still needs further improvement, it is recognized that the Directive was a step forward in protecting the interests and the rights of e-commerce consumers.

It should be noted that at the time of the writing of this thesis, the European Commission is in the process of preparing to apply a new Directive on Consumer Rights (2011/83/EC), which is intended to replace the Distance Selling Directive, Doorstep Selling Directive (85/577/EEC), Directive on Consumer Sales and Guarantee (1999/44/EC), and Directive on Unfair Contract Terms (93/13/EEC). The new Directive will be applied on 13 June 2014. Since this Directive has not yet been applied, its effectiveness in regulating the rights of the consumers has not yet been proven. Therefore, this regulation will not be included in the comparative analysis of this thesis. Nevertheless, a brief analysis of the changes on the new Directive compared to the currently existing Directives could be illuminating.

In comparison with existing Directives, the new Directive will bring several changes to the regulations, including protecting consumers against cost traps on the internet, increasing the

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98 Ibid
99 Kay Henderson and Alan Pouter (n 84)
transparency of the sellers’ prices, banning pre-ticked boxes on website forms, extending the duration of the rights of consumers to withdraw from their sales contracts, obliging the sellers to refund the consumers within 14 days from the date of their withdrawal, eliminating surcharges on credit cards and hotlines usages, providing clearer information on who will pay for returning the goods to the sellers, providing consumers with better information for digital products, and setting up common rules for businesses that will make it easier for them to trade all over Europe.\textsuperscript{101} Since the effectiveness of these changes has not yet been proven, these changes will not be taken into account for the recommendations provided on this thesis.

3.3 Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on Electronic Commerce)

Directive 2000/31/EC or E-Commerce Directive was approved and signed by the European Parliament and the Council in 2000. According to the European Commission, the aim of this Directive is: “to remove barriers to the establishment of providers of information society services and to the cross-border provision of on-line services in the internal market, therefore giving both to businesses and citizens legal certainty.”\textsuperscript{102} The Directive without prejudice ensures the


protection of minors and human dignity, consumer protection, and the protection of public health to the level of protection in other Directives.¹⁰³

The E-Commerce Directive consists of 24 Articles and regulates five central issues such as:

1. Establishment of Information Society service providers (Articles 4-5).
2. Commercial communications, for instance, advertising, marketing etc. (Articles 6-8).
3. Online conclusion of contracts (Articles 9-11).
4. Liability of intermediaries (Articles 12-15).
5. Implementation (16-20).

Article 5 (1) of the Directive states that general information to be provided by the service provider should be easily, directly and permanently accessible. It means that recipients will not have to put much effort in accessing the information. Moreover, the information provided by the service provider should at least have the following details:¹⁰⁴

1. The name of the service provider.
2. The address of the service provider, so that recipients know where to go in order to complain to the service provider in the non-virtual world.
3. The details of the service provider such as email address and telephone number, so that recipients can easily contact the service provider.
4. Information of trade or similar public register where the service provider is registered.
5. Information of the relevant supervisory authority, in case the activity is subject to an authorization scheme.

¹⁰³ E-commerce Directive, Recital 11
¹⁰⁴ Ibid, Article 5(1)
6. Information concerning the regulated institutions body where the service provider is registered, his or her professional title is granted and reference to the applicable professional rules.

7. Where the activity of the service provider is subject to Value Added Tax (VAT), the identification number has to be provided.

Article 5 (2) deals with the obligation to provide price information. Information regarding the price must be indicated clearly and unambiguously. Additional costs such as delivery cost or taxes must be included.\(^\text{105}\)

In order to attract consumers, commercial communications are very important for a company. Several forms of commercial communications, such as advertising and direct marketing can be distinguished on the internet. Article 6 states that any information related to commercial communication must comply with the following conditions:\(^\text{106}\)

1. Communications and the natural or legal person on whose behalf the commercial communication is sent must be clearly identifiable.

2. Promotional offers permitted in the Member State where the provider is established shall be easily identifiable as such, and their qualifying conditions shall be easily accessible in an unambiguous manner.

Article 7 deals with unsolicited commercial communication by electronic mail. The E-Commerce Directive does not forbid the use of unsolicited commercial communication; however,

\(^{105}\) Ibid, Article 5(2)  
\(^{106}\) Ibid, Article 6
Member States are able to decide not to allow it.107 Commercial communications by member of regulated profession are mentioned in Article 8.108 This Article points out that member of a regulated profession (e.g. lawyers) are allowed to have their commercial communications as long as their professional norms are not violated.109 Treatment of online contracts is mentioned in Article 9 and the information requirements that need to be provided in online contracts are mentioned in Article 10. When placing an order, the first principle that service provider must acknowledge without undue delay is the receipt of the recipient’s order. The second principle is that the order and acknowledgment are deemed to be received when parties that are addressed are able to access the order.110

Moving on to Article 17, this Article deals with out-of-court dispute settlement. In case there is a dispute between the provider and the recipient, the legislation of Member States may not hamper the use of alternative dispute resolution (ADR). ADR is considered to bring benefits to the consumers, since consumers could save more money and time when resolving their conflicts using this resolution.111

In order to identify that the E-Commerce Directive has been consistently applied throughout Member States, the Commission created the First Report112 that provides the first assessment of the transposition and application of the Directive and its impact. This report was created in order to ensure that the EU stays in the forefront of the development of e-commerce, and provides the

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107 Ibid, Article 7. Unsolicited communications are also being regulated in Article 13 of Directive 2002/58/EC.
108 Ibid, Article 8
109 Arno R. Lodder (n 4) p. 81
110 Ibid, p.86
111 Ibid, p.91
legal certainty for both consumers and sellers.\textsuperscript{113} The First Report indicated that the E-Commerce Directive is successful in terms of providing a robust legal framework for information society services in the Internal Market.\textsuperscript{114} The report is an example that the monitoring of the application of the Directive on Member States by the Commission is considered as essential since there could be numerous new developments in e-commerce.\textsuperscript{115}

Moreover, the Commission is taking several steps to ensure Member States law to be compatible with the Directive. “The Commission will further concentrate on:

- Improving administrative co-operation between Member States
- Collecting information on how the Directive works in practice
- Raising awareness among business and citizens
- Monitoring policy developments in order to identify possible needs for additional Community action
- Strengthening international co-operation in order to develop international rules on matters such as the liability of internet intermediaries and the procedures for removing illegal content.”\textsuperscript{116}

It is essential to gather and share all the information regarding the Member States’ experiences on how the new legislation is being used in practice while applying the E-Commerce Directive.\textsuperscript{117} In order to create a holistic and effective legal product, the Commission introduced an open consultation related to the legal problems in conducting e-commerce activities. This

\textsuperscript{113} European Commission, ‘E-Commerce Directive’ \url{http://ec.europa.eu/internal_market/e-commerce/directive/index_en.htm} accessed September 20 2013
\textsuperscript{115} Ibid
\textsuperscript{116} Ibid
\textsuperscript{117} First Report (n 112)
open consultation identified the existing and potential practical barriers experienced by sellers and consumers when performing online business.\textsuperscript{118} Recently, the Commission published a report on progress concerning the e-commerce implementation and its action plan.\textsuperscript{119} According to the report there are 16 main actions undertaken by the Commission, some of the actions plan were already completed and the remaining ones are underway. One of the main actions is related to consumer protection, it is the first main action that states: “The Commission will ensure that the Electronic Commerce Directive and the Directives protecting online consumers are correctly applied by inter alia, improved administrative cooperation with the Member States, in particular through the extension of the Internal Market Information System (IMI), the Consumer Protection Cooperation network (CPC) and an in-depth evaluation study of the transposition and implementation of the Directive (2012)”.\textsuperscript{120} This action consists of three approaches:

1. The Regulation on the Internal Market Information system\textsuperscript{121}. The outcome of this approach is the launch of a pilot project by the Commission which is intended to assess whether the IMI is an efficient, cost-effective and user-friendly tool to implement Article 3 (4), (5), and (6) of E-Commerce Directive.

2. The Consumer Protection Cooperation network\textsuperscript{122}. In 2012, the Commission reviewed whether the CPC Regulation and its mechanisms are still fit for its purpose and still effective for a rapidly developing e-commerce sector.

\footnotesize\textsuperscript{118} Ibid
\footnotesize\textsuperscript{120} Ibid
\footnotesize\textsuperscript{121} Internal Market Information System available at \url{http://ec.europa.eu/internal_market/imi-net/about_en.html} accessed October 3 2013
\footnotesize\textsuperscript{122} Review of the CPC Regulation \url{http://ec.europa.eu/consumers/enforcement/} accessed October 3 2013
3. Implementation of the E-commerce Directive. In order to obtain an updated overview of the Directive’s implementation, the Commission is conducting a thorough study regarding the compliance of national legislations and national case laws among Member States. The studied national case laws are limited to section 4 of the E-Commerce Directive.

Another main action is considered to be able to maximize consumer participation and trust in the Single Market. Action 7 states as its aim to adopt a “European Consumer Agenda” as a forward strategy and placing consumers at the center of the Single Market, by improving consumers’ capacity for action and appropriate protection of their rights.

3.4 Conclusion

The conclusion of this chapter is that the e-commerce regulations in the EU are very extensive and cover a large part of e-commerce activities. Even though there are some Directives that were made prior to the mass popularization of e-commerce, these Directives are still valid in the increasingly complex e-commerce situation of today. This general validity reflects the broad vision that the EU regulators had when formulating the Directives.

The review of the Distance Selling Directive shows that further improvements are needed since this Directive was established far before the advance of technologies that transformed the

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123 A European Consumer Agenda – Boosting confidence and growth

124 Ibid (n 118)
landscape of distance contracts. In other words, the Directive needs to accommodate the up-to-date e-commerce medium, which is now more varied and advanced compared to decades ago. Moreover, the reviews of the E-Commerce Directive said that there is no need for an improvement to the Directive itself; however, the improvement to the implementation of the Directive is needed. This improvement of the Directive’s implementation is outlined in several action plans from the European Commission. Consumer protection on e-commerce is recognized as one of the essential parts that need to be improved, and is specifically addressed by two of the aforementioned action plans.

Consumer rights protection on e-commerce is currently being regulated by the Distance Selling Directive and the E-Commerce Directive. In these Directives, several crucial rights are mentioned, such as the details of information that should be given by sellers to consumers when performing e-commerce activities and the right of withdrawal. Even though there are some overlaps between the Directives, e.g. with regard to the information that is required from the sellers, this overlap does not conflict with each other and both Directives are still applicable.

It could be seen from the conclusions above that the protection of consumer rights is considered by the Community to be a very important element in ensuring that e-commerce regulations function effectively. With these consumer rights protection in place and harmonized between Member States, cross-border e-commerce activities could be performed without barriers and the trust between consumers and sellers could be built and safeguarded. Since the implementation of Single Market legislation by the EU Member States, including legislation related with e-commerce, has been shown to be effective in harmonizing the diverse regulations between
Member States, this demonstrates that the EU regulations could serve as a good model for regulations in other countries.\textsuperscript{125}

CHAPTER 4

COMPARISON BETWEEN INDONESIAN AND EUROPEAN UNION ELECTRONIC COMMERCE LAW

Referring to the main research question of this thesis, which is to seek the similarities, differences and possible improvements for e-commerce regulations that Indonesia could adopt from EU Directives, specifically on the issue of consumer rights protection, this section will discuss the comparison between e-commerce law in Indonesia (EITA, GRESTO and CPA) and the European Union (Distance Selling Directive and E-Commerce Directive). The structure of the comparison will start from the similarities and differences between the three sets of regulations, proceeds to the similarities of the challenges that Indonesia and the EU experienced with regard to the implementation of e-commerce regulations, and ends up with a section on the valuable lessons that Indonesia could adopt from the EU regulatory approach in e-commerce regulation.

4.1 Comparison of Electronic Commerce Regulation in Indonesia and EU

As explained in Chapter 2, EITA, the primary source of e-commerce regulation in Indonesia, is not solely focused on activities related with online transactions, but also other internet or online activities such as cybercrimes. Due to the broad scope of EITA, the Indonesian government established GRESTO, a regulation derived from EITA and focused on regulating implementations of electronic systems and transactions. However, issues related to consumer
rights protections on e-commerce are being regulated by neither GRESTO nor EITA, but rather regulated by the Act for general consumer protection, CPA.

Another relevant information is that EITA was based on several internationally applicable provisions, including: 1) The United Nations Commission on International Trade Law Model Law on Electronic Commerce (UNCITRAL MLEC) 2) The United Nations Commission on International Trade Law Model Law on Electronic Signatures (UNCITRAL MLES) 3) The European Union E-Commerce Directive 4) The European Union E-Signature Directive 5) The Council Of Europe Convention on Cybercrime. The aforementioned bodies of provisions were used as a source of legal inspiration during the drafting of the EITA regulation, even though EITA is not a formal ratification of those provisions. Since the EU E-commerce Directive is one of the regulations that EITA is based upon, there are several noticeable parallels between the two regulations.

The scope of e-commerce in Indonesia and European Union Law is recognized to be very broad, with the rules governing e-commerce activities implemented in several different Acts or regulations. Whereas Indonesia has two kinds of regulations concerning e-commerce, EITA and GRESTO, a similar situation exists in the EU, where the newer E-Commerce Directive worked in tandem with the already existing Distance Selling Directive.

The similarities of the e-commerce regulations in both Indonesia and EU can be seen on the general principles of both regulations, which define the minimum required information necessary before an online contract could be considered legitimate. In Indonesia the required information is regulated under Article 48 (3) of GRESTO, while in the EU similar requirement is regulated under Article 4 of the Distance Selling Directive.

Another similarity is with respect to the settlement of disputes. Both Indonesian and European Union law regulates that consumers and sellers can resolve their disputes not only in court, but also out of court. The E-Commerce Directives states that transposition of the Directive to the national law should not hamper the usage of Alterative Dispute Resolution (ADR).127 European Commission encourages consumers to resolve their disputes through numerous ADR entities within the Member States. As an alternative to ADR, consumers can also settle their disputes through the Online Dispute Resolution (ODR).128 Parallel with the EU regulation, EITA states that parties can resolve their disputes through alternative dispute resolution as long as it is still in accordance with the provisions of Indonesian legislation.129 Moreover, CPA stipulates that consumers can settle their disputes through bodies appointed for resolving out-of-court settlements such as the Consumer Dispute Settlement Bodies or Badan Penyelesaian Sengketa Konsumen.

With regard to the privacy issue, Article 26 of EITA regulates that processing of personal data is only allowed on the basis of consent of the person concerned. This consent requirement also applies in e-commerce activity, where sellers need to obtain the consent of the consumers if the sellers want use any kind of consumers’ private data for their own purposes. Article 26 was intended to regulate privacy protections for all kinds of internet users, but since the scope of the Article is very broad, it can also be applied to e-commerce. This Article considers that Privacy is important in relation to e-commerce, especially for consumers. Sellers for their own benefit often misuse consumers’ data, where for instance sellers could sell consumers’ data to another businesses. This consumer protection is similar with the one mentioned in Recital 17 of the

127 E-Commerce Directive, Article 17 (1)
129 EITA, Article 39 (2)
Distance Selling Directive, which states that consumers have their right to privacy according to the Articles 8 and 10 of the European Convention of the Protection of Human Rights.

The in-depth comparison between Indonesian regulations and EU Directives on e-commerce is based on the scope of provisions related with consumer rights protection. To begin with, although GRESTO and EU Distance Selling Directive both regulates the minimum required information necessary for appropriate online contracts to be considered as legitimate contracts in its provisions, some of differences can be seen if the regulations are examined in more detail. The different provisions are:

1. Right to obtain information

In performing the transaction for sales or purchases, including e-commerce transaction, sellers are obliged to give accurate and clear information to consumers regarding the goods or services that they purchased. In EITA, the information that the sellers need to provide to consumers is not regulated. However, as stated in Chapter 2, GRESTO does cover the minimum information that sellers are obliged to provide to the consumers. GRESTO states that an electronic or e-commerce contract between sellers and consumers is legitimate if the contract at least consisted of the following information:\(^{130}\)

- The identify of sellers and consumers
- The object and the specification of the goods
- The costs
- The cancellation procedure
- The provision which entitles the aggrieved party to be able to return the goods and/or request a replacement product if there is a hidden defect
- The choice of law that can be used in resolving the problems.

\(^{130}\) GRESTO, Article 48 (3)
This provision was created in order to provide legal certainty for e-commerce consumers in Indonesia, to increase consumer confidence regarding the legitimacy of the seller, and to ease the consumer in reporting the issue to the law enforcement in case a fraud occurred during or after the electronic commerce transaction.

Moreover, CPA also states information that needs to be provided by sellers. However, in contrast to GRESTO, this information is spread over several articles and not in a single article. The information needed by CPA is:

- Consumers have the rights to obtain comfort, security and safety in using or consuming the goods or services
- The sellers are obliged to provide correct, clear and honest information with regard to the condition and warranty of the goods or services and provide explanation on how to use, repair and maintenance of such goods.

Compared to the EU Distance Selling Directive, it is explained that in any distance contract, consumers must be provided with the following information: 131

- The identity of the supplier, including his or her address
- The information regarding the main characteristic of the goods and services
- The price of the goods and services, including all the cost of the taxes
- The delivery costs
- The arrangements of payment, delivery or performance
- The information that the consumers have the right of withdrawal 132
- The cost of using means of distance communication, where it is calculated other than basic rate

131 Distance Selling Directive, Article 4 (1)
132 Exception: If the situation referred to the case in Article 6 (3) of Distance Selling Directive.
- The period for which the offer remains valid
- The minimum duration of the contracts in the case of contracts for the supply of goods or services to be performed permanently or recurrently.

From the comparison between both regulations, it can be seen that the Distance Selling Directive is more extensive in terms of defining the obligatory information that sellers must provide to the consumers than GRESTO, for instance:

1) When providing identifying information for the sellers and consumers, GRESTO only states in Article 35 that the obligatory identifying information is the sellers’ identity, which is then explained further that the sellers’ identity could be their logo or name. However, in practice a simple logo or name of the seller are not sufficient to enable a consumer in properly identifying the seller’s identity. In contrast, the Distance Selling Directive unambiguously states that suppliers or sellers are obliged to provide consumers information about their address, which could be very important information to the consumers because e-commerce consumers are generally at a disadvantage compared to the sellers since consumers usually need to pay in advance before the goods are delivered to them, exposing consumers to the possibility of a fraud where the sellers never send the goods to the consumers after receiving their money.

2) With regard to the costs that are involved in the contract, GRESTO only states that the e-commerce contract between the sellers and consumers should provide information regarding the costs while failing to elaborate further what kind of

133 GRESTO, Elucidation of Article 35 (1) (a)
134 Distance Selling Directive, Article 4 (1) (a)
costs should be included in the contract. Similarly, the CPA does not stipulate the information regarding such costs as well. This can lead to ambiguousness for both consumers and sellers when conducting e-commerce transactions. Whereas, the Distance Selling Directive specifies that the sellers are obliged to provide detailed information regarding: the price of products, the included taxes, and also the delivery costs to consumers. Providing the all-inclusive costs is essential in order to prevent any mysterious additional costs that consumers would not expect. In essence, comprehensive and accurate disclosure of information is an important issue that needs to be regulated.

2. Right of withdrawal

Article 49 of GRESTO states that “sellers shall give a deadline to the consumer to return the goods delivered if not in accordance with the contract or there is a hidden defect”. Article 7 (g) of CPA regulates that sellers are obliged to provide compensation, redress or substitution if the goods or services received by consumers are not in accord with the prior agreement. This means that the right of withdrawal would be valid only if the products that the consumers purchased were not the same as in the e-commerce contract, or if there is any hidden defect in the products. In practice, the existing rule in GRESTO and CPA that regulates the right of withdrawal is perceived to be unfair for online consumers in Indonesia. This perception of unfairness arose because the regulation heavily depends upon the contract made during electronic commerce transaction to determine whether the consumer has the

136 GRESTO, Article 48 (3) (d)
137 Distance Selling Directive, Article 4 (1) (c) (d)
138 GRESTO, Article 49
139 CPA, Article 7 (g)
right of withdrawal or not, but a contract could not cover all eventualities or aspects of the goods being sold, and thus there is no possibility for consumers to return the goods in the case where the goods do not meet their expectations or preferences. For instance, a consumer bought a dress from an online shop, which listed the information about the physical characteristics of the dress, but it turned out that when the dress arrived, the consumer found out that she had an allergic reaction to the material of the dress. The seller would not accept the withdrawal request from the consumer because the contract that they agreed upon does not state that the condition of withdrawal includes reasons of dissatisfaction from the consumer regarding the goods that they purchased. Due to this absence of condition, the consumer could not return the dress to the seller because there is no breach of contract between the seller and the consumer.

Compared to the Indonesian regulation, Article 6 of the Distance Selling Directive regulates that “consumers shall have a period of at least seven working days in which to withdraw from the contract without penalty and without giving any reason and the only charge that may be made to the consumer because of the exercise of his right of withdrawal is the direct cost of returning the goods”.140 There are two important aspects from this Article. First, consumers have a minimum of seven working days to consider whether they want to return the goods that they purchased or not. Second, they can return the goods that they purchased without the need to give any reason for returning the goods. It means that if the condition of the goods that the consumers bought did not meet their expectation, they can easily return them to the sellers, as long as the goods are still in the same condition when consumers first received them. To this regard, this Article could cover the aforementioned example, where the consumer found out that she had an allergic reaction to the material of the dress.

140 Distance Selling Directive, Article 6 (1)
Moreover, from the comparison, it can be seen that Article 49 of GRESTO only provide limited consumer protection since the rights of the consumers according to this Article are limited.

4.2 Similar Challenges between E-Commerce Markets in Indonesia and the EU

The European Union e-commerce market also faced, at its earlier stages, a similar set of challenges faced by the Indonesian market at the present times. Compared to the European Union, Indonesia is still at the early stage of adopting and integrating e-commerce activities into the daily activities of its society. Many challenges that hinder the growth and acceptance of e-commerce in Indonesia also exist in the European Union when it started to embrace and regulate e-commerce. Thus, Indonesia could learn from the undertaken regulatory steps and the insights that the European Union had in order to address challenges that are similar between both markets, especially during the early adoption stage of e-commerce in the European Single Market.

At its present stage, the primary challenge that hinders the adoption of e-commerce in Indonesia is the lack of trust between consumers and sellers.\footnote{Rama Mamuaya, ‘The Problem with Indonesia’s E-Commerce Scene’, (June 23 2011) \url{http://en.dailysocial.net/post/the-problem-with-indonesias-e-commerce-scene} accessed October 16 2013} Part of the reason behind this lack of trust is the widespread incidence of e-commerce fraud in Indonesia\footnote{Jason Wuysang, ‘E-Commerce in Indonesia’ (August 6 2012) \url{http://www.slideshare.net/jasonewuysang?utm_campaign=profiletracking&utm_medium=sssite&utm_source=ssslideview} accessed October 16 2013}, which mostly occurs in informal online shops that operates on various social medias by home business owners.\footnote{Beritasatu.com, ‘Tren Belanja Toko Online di Indonesia’ (July 31 2013) \url{http://www.beritasatu.com/gaya-hidup/129332-tren-belanja-toko-online-di-indonesia.html} accessed October 16 2013} These social
medias includes Facebook\textsuperscript{144}, Twitter\textsuperscript{145} and Instagram\textsuperscript{146}, and most of these social medias are not designed with payment security in mind. Most of the time, sellers using these informal online shops could easily change their identity and hide their contact information from the consumers. Thus, consumers using these informal online shops are vulnerable to frauds from dishonest sellers. Moreover, since these informal online shops usually prefer payments through direct bank transfers, revocation of payment in case a fraud occurs is much harder compared to payments using payment cards due to the nature of direct bank transfer in Indonesia.\textsuperscript{147} It is possible to ask the bank to freeze the account of the seller, but the procedure is lengthy and by the time the warrant is issued by the police, the seller could already withdraw the money and abandon the account.

This lack of trust was also one of the reasons that hindered European consumers from adopting e-commerce, albeit at a lower scale of concern compared to Indonesian consumers. According to a survey in 2004, the three main reasons why a European consumer was not interested enough in online shopping were:\textsuperscript{148}

1. 57\% of respondents stated that the reason why they were not interested in online shopping was because of a lack of access. This could be the lack of internet access or other means to conduct e-commerce.

2. 28\% of respondents stated that they were not interested in online shopping due to the lack of interest in buying anything from the internet as a medium.

3. 25\% of respondents stated that as a consumer they did not trust the internet.

\textsuperscript{144} http://en.wikipedia.org/wiki/Facebook accessed October 16 2013
\textsuperscript{145} http://en.wikipedia.org/wiki/Twitter accessed October 16 2013
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\textsuperscript{148} Paolo Balboni, “Trustmarks in E-Commerce The Value of Web Seals and the Liability of their Providers” (T-M-C Asser Press, 2009) p.17
The above survey also concluded that psychological barriers hindering European consumers from conducting e-commerce activities do exist. The top five psychological barriers for e-commerce consumers are:\footnote{Ibid, p. 18}

1. Security
2. Privacy
3. Unfamiliarity with services
4. Lack of direct interaction between consumers and sellers, and
5. Credibility of information.

It could be seen from the above survey that consumer trusts is hard to obtain. Trust is an essential point in performing e-commerce; a successful online transaction requires an initial trust between consumers and sellers.\footnote{Ronald de Bruin, \textit{`Consumer Trust in Electronic Commerce: Time for Best Practice’} (Kluwer Law International, 2002) p 11.} The difficulties in obtaining such trust is exacerbated if the sellers are new and do not have any prior reputation in e-commerce transactions. In order to gain trust from consumers, having detailed contact information and security certificates such as SSL certificate displayed on the website can be very helpful.\footnote{Alexandros Mylopoulus, `Neelie Krooes’ Blog, E-Commerce in the EU: an Insider’s View’ (August 2012) available at \url{http://ec.europa.eu/commission_2010-2014/kroes/en/blog/e-commerce-insiders-view} accessed October 3 2013} Moreover, trustmarks marking scheme that aim to guarantee the quality and security of an online shop can also be very beneficial for both sellers and consumers.\footnote{Ibid} Trustmark has been found to be highly valuable in increasing the consumers’ level of trust, especially for verifying the reputation and the quality of the sales process of the associated online shop.\footnote{European Commission, ‘EU online Trustmarks Building Digital Confidence in Europe’ (2012) \url{http://ec.europa.eu/information_society/newsroom/clf/dae/document.cfm?doc_id=1815} accessed October 20 2013}
4.3 The EU Regulatory Approach as a Basis to Improve Indonesian Legal Framework on E-Commerce

Based on the previous section, it could be seen that European Union faced challenges similar to what is being faced by Indonesia at the present stage of integrating e-commerce to its society. In order to address these challenges, the European Commission has undertaken several regulatory steps to reduce the hindrance and increase the rate of e-commerce adoption in its society:

1. In order to enhance consumers’ trust in e-commerce, many EU online shops carry online trustmarks or digital certificates in the interest of assuring e-commerce consumers that their service has been validated by a third-party service to be safe for their security and privacy.\(^{154}\)

2. In order to obtain clear information, sellers are obliged to provide clear information regarding the goods or services that consumers purchased. In this regard, consumers’ rights are already protected by the existence of EU regulations Distance Selling Directive and E-Commerce Directive.

3. In order to protect the consumers from purchasing goods that are not satisfactory, consumers have the right to withdraw from the transaction without the need to give any reasons and as long as the withdrawal is still within the valid duration that is regulated under the EU Directives. In practice this means that consumers could return the goods they purchased in case the quality is not satisfactory for them. Since consumers cannot physically see, touch or feel the goods that they purchase, having this right is very important for their protection.

\(^{154}\) Ibid
From the abovementioned regulatory steps, and the comparison of e-commerce consumer rights protection between the European Union and Indonesia, there are several regulatory steps that Indonesia could adopt from the European Union in order to improve its electronic commerce regulation:

1. Rights to obtain information. This right is important for consumers because having clear information about the sellers and the costs involved with the products is essential for consumers, both in pursuing their rights in the case where sellers do not fulfill their obligation and in preventing the consumers from hidden costs such as undisclosed tax or delivery costs. Since in Indonesia, the mandatory identifying information that sellers need to provide to the consumers are only the name and the logo of the online business entity, it is still common to find cases where sellers provide ambiguous or non-identifying information to the consumers. In the EU, Article 4 of the Distance Selling Directive listed the mandatory information that sellers must give to consumers. Even though similar regulation is defined in Article 48 (3) of GRESTO, as could be seen from the above example, the information required from the Article in GRESTO is not detailed enough and could produce ambiguousness or vagueness for the consumer.

2. Rights to withdrawal. The existing rights of withdrawal in Indonesian regulations only give consumers the right to cancel their contract and return their purchased goods in case the goods are not the same as in the e-commerce contract, or in case the goods is damaged on arrival. Similar regulation in the European Union provided a greater degree of freedom for consumers in returning their purchased goods, where any kind of reasons would be sufficient for those consumers in demanding their withdrawal from the contract.
If Indonesia could include similar kind of protection on its legal framework, this would serve to assuage one of the primary concerns for e-commerce consumers.

Regarding the trustmark certification that is commonly used in EU online shops, in Indonesia the trustmark certification is already being regulated in detail under Chapter 6 of GRESTO. However, the implementation of the trustmark certification in Indonesia itself is still at an early stage and the Indonesian government also does not yet provide proper socialization of the certification to the consumers, causing the low number of online shops in Indonesia that already carry the trustmark certification. Since trustmark is already being sufficiently regulated in Indonesia, it is not included as a potential improvement that could be adopted within Indonesian legal framework.

4.4 Conclusion

From the comparison between the Indonesian and EU regulation on e-commerce, it can be concluded that Indonesia does not yet put an emphasis on consumer rights protection within the context of e-commerce transactions, whereas the EU has already emphasized consumer rights protection in their e-commerce regulations. The rapid technological development affects the regulations of e-commerce, especially on consumer protection, which is very important in the case of e-commerce since consumers’ are often put in a vulnerable and disadvantaged position when participating in e-commerce activities. On this basis, the EU has adopted consumer rights protection in their e-commerce regulations (Distance Selling Directive and E-Commerce Directive), whereas Indonesian regulations (EITA and GRESTO) do not put an emphasis on consumer rights protection in e-commerce. Meanwhile, CPA as the existing regulation
concerning consumer protection in Indonesia was designed for traditional commercial consumers and not entirely suitable for e-commerce consumers. The EU Directives provides several provisions that made e-commerce easier and more convenient for consumers in conducting their e-commerce transactions, which could be a good reference of Indonesian government in improving its e-commerce regulations.
CHAPTER 5

CONCLUSION

This chapter will first provide a summary of the thesis along with its conclusion, and then provide recommendations for the Indonesian government to improve the current Indonesian legal framework regarding e-commerce.

5.1 Conclusion

E-commerce activities in Indonesia are experiencing high demands from its society. However, several issues impede the growth of e-commerce in Indonesia. The existing legal framework of e-commerce in Indonesia does not cover several crucial elements such as consumer rights protection. Thus, there are several improvements to the existing e-commerce regulations that need to be addressed by the Indonesian government.

Currently, regulations relevant to e-commerce in Indonesia are covered in EITA, an Act that concerns electronic information and transactions, and GRESTO, a Government Regulation that concerns electronic system and transaction operation. Even though both regulations do not specifically regulate or address consumer rights protection in e-commerce, the existence of both regulations helps in regulating general issues related with IT and online transactions.

In Indonesia, the issues of consumer rights protection in general are regulated in CPA. However, CPA was designed with traditional face-to-face commercial transactions in mind, and was enacted before the proliferation of e-commerce in Indonesia. Since the nature of e-commerce transactions is different compared to traditional commerce, which put e-commerce consumers at
a more vulnerable and disadvantaged position compared to traditional consumers, CPA is considered less suitable in providing protection for e-commerce consumers. These disadvantages, for instance, arise because e-commerce consumers could not physically verify the goods that they purchased before the transaction was made.

Since there is no regulation providing consumer rights protection that take into account the different nature of e-commerce transactions, Indonesian e-commerce consumers are often faced with potential violation of their rights. As discussed in Chapter 2, large percentages of Indonesian e-commerce consumers had encountered some problems when shopping online. The top online shopping problems reported by Indonesian e-commerce consumers are related with the low quality of the goods that they received, and goods that ended up being delayed or undelivered. These issues underscored the perception by some Indonesian consumers that e-commerce is less secure than traditional commerce.

Furthermore, regarding the resolution of issues encountered by Indonesian consumers, the large majority of consumers prefer to contact the sellers directly when they want to complain about the issues that they encountered, and very few consumers prefer to report the issue to the police. The resolution of issues is considered to be ineffective, as exemplified by the large percentage of consumer complaints that ended up being unresolved. The lack of detailed regulation concerning the information that the sellers are obliged to provide to the consumers, which could be used to effectively identify, contact, or report the sellers to the police or resolve the issue out-of-court, might be one of the factor that negatively affect the resolutions of issues by Indonesian e-commerce consumers.

It can be concluded from the above expositions that the issues faced by Indonesian e-commerce consumers were a result of the lack of proper regulations regarding e-commerce consumer
protections and the present state of e-commerce in Indonesia is still in need of some improvement. The improvement could be in the form of improving the regulations concerning e-commerce, or by improving the facilities provided by the government in order to support the e-commerce activity itself. These two improvements could affect the development of Indonesian economy as well, since the online shops in Indonesia experienced a large proliferation and the supporting technology develops very rapidly. Thus, approaches by the Indonesian government to improve the development of e-commerce in Indonesia would be essential.

With regards to the possible improvements, both the EU Distance Selling Directive and the EU E-Commerce Directive could serve as an important source of reference for the Indonesian government in improving its e-commerce regulations, especially in the area of consumer protection. Since these Directives have been proven to be effective in regulating the e-commerce market in the European Union, there are potentially valuable lessons from the Directives that Indonesia could adopt in order to improve its e-commerce regulation.

Before this thesis proceeds to the section about recommendations to the Indonesian government taken from the e-commerce regulations in the European Union, it should be noted that the European Commission is in the process of applying a new Directive on Consumer Rights, which is to be implemented by the Member States in 2014. This new Directive can be a future reference for the Indonesian government in establishing its regulation on e-commerce consumer rights protection. However, since the Directive is not yet in force, and its effectiveness in the field remains to be proven, the recommendations would not take into consideration the content of the new Directive. Nevertheless, for the prospect of future research, it is still enlightening to see the changes in the new Directive compared to the existing EU Directives that is already in force. These changes are described in Chapter 4.
5.2 Recommendations

1. Rights of the consumers in obtaining clear, thorough, and comprehensive information regarding the identity of the online sellers need to be better regulated. Specific identifying information such as the geographical address, the electronic mail address, and easily contactable telephone number that the consumer could use to directly contact the sellers need to be added to the information that the sellers are obliged to give to the consumers. The existing regulation in EITA, GRESTO, and CPA does not provide any provision obliging the sellers to provide identifiable information in detail. By obliging the sellers to provide identifiable information, existing out-of-court settlement bodies can also investigate and handle e-commerce disputes more effectively.

2. Rights of the consumers in obtaining clear, thorough and comprehensive information of the costs involved with the products that they purchased. The inclusion of all costs, including taxes and delivery costs, that consumers must pay is essential. EITA, GRESTO and CPA do not require such information in its provisions. By providing comprehensive information regarding the total cost of the product, the consumers are better protected from hidden costs, and the trust of the consumer will be enhanced.

3. Rights of withdrawal for online consumers need to be expanded from the existing regulations. Consumers need to be able to withdraw from the contract and return the goods that they purchased without the need to state any reasons and without exceptions, as long as the goods are still in the same condition in which the consumer received it. The existing regulation only give the consumer the right to return the good if it is different with the one mentioned in the sales contract, or if the good is damaged. The duration in which the consumer could still withdraw from the contract also need to be defined to start
from the date of the goods being received, since in the present regulation the starting date was not defined and could be counted from the date when the contract was signed. The expansion of this right would give consumer better protection from unexpectedly low quality goods or delayed delivery.

The above recommendations could be implemented in the Indonesian regulations in two different ways, through amendment of existing regulations such as EITA or GRESTO, or through the creation of a new regulation. This thesis recommends the creation of a new regulation that is specifically designed for regulating the rights and obligations of both sellers and consumers in e-commerce transactions. The new regulation could be partially derived from CPA, but with expanded Articles regarding the obligations to the sellers and rights of the consumers that implement the recommendations of this thesis. The basis of the implementation recommendation is because there are other unresolved legal issues concerning e-commerce transactions, issues that lie outside the scope of this thesis, which need further attention from the government, such as the issue of which sales tax should be applicable if the seller is a private individual that is not registered as a tax entity but opened a C2C online shop. It would be better if the various legal issues concerning the rights and obligations of e-commerce sellers and consumers could be focused in a single regulation.

It is hoped that with the adoption of the recommendations on this thesis to the Indonesian regulations, the rights of e-commerce consumers in Indonesia could be protected in a better way and the trust of the consumers could increase, stimulating the growth of e-commerce in Indonesia’s economic sector.
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