

Urgency of Contract Model Settings in the Global Digital Market Related To Tourism Business: A Study on Consumer Protection and Electronic Information and Transactions

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Abstract

Globalization has now penetrated various sectors, including the Tourism Business Sector. One of the characteristics is the process of digitization in all fields, which in turn brings about changes in the implementation of the law. This paper will discuss the issue of optimizing consumer protection in the context of the emergence of new contract forms, namely standard digital contracts in the business world and the presence of a new cross-borderless market mechanism, known as the Digital Global Market or Marketplace. This research will formulate two issues related to how to regulate consumer protection policies for users of the global digital market platform services about dispute resolution? Then about how to model digital contract arrangements as an effort to optimize consumer protection? Where the writing uses a normative research method, either through the approach of legislation, cases, comparisons, and comparisons, which are presented descriptively, evaluatively, and presenting arguments that are expected to be able to contribute ideas for legal development in the world of tourism business.

Keywords

Digital global market; digital contract; consumer protection.



I. Introduction

Indonesia still occupies the title of a developing country. In the context of business relations between countries, of course, there will be no avoidable existence of contracts between the parties involved in this activity. The difference in the nomenclature of the contract with the agreement is the wrong opinion. Moreover, stating that a written agreement is referred to as an unwritten temporary contract remains called an oral agreement.

Development is a systematic and continuous effort made to realize something that is aspired. Development is a change towards improvement. Changes towards improvement require the mobilization of all human resources and reason to realize what is aspired. In addition, development is also very dependent on the availability of natural resource wealth. The availability of natural resources is one of the keys to economic growth in an area. (Shah, M. et al. 2020)

Between countries that adhere to common law and civil law adherents of course have differences regarding the legal terms of a contract. In Indonesian law the legal terms of a contract/agreement are stipulated in Articles 1320 and 1338 of the KuhPer, which consists of toestemming, the angst to make an engagement, a certain thing, and a halal cause.

Usually, a contract is made between two or more parties who want to tie themselves to one or more people. In the past to certify a contract, it takes the parties to be able to deal directly with the proof of the validity of a contract by which to be signed on stamped paper. In the current era of all-digital, all these circumstances change. The ratification of a

contract no longer requires the physical meeting of both parties. New terms are even coming to be known such as digital contracts, digital signatures, digital markets, digital transactions, and even digital currencies.

These digital contracts are usually in the form of standards, which are made by sellers and are already loaded into their respective digital platforms. The juridical basis of the existence of this type of contract is regulated in Article 1 Number 17 of Law No. 11 of 2008 jo Law 19 of 2016 concerning Information and Electronic Transactions (hereinafter referred to as the "ITE Law").

Payments can now be made through e-money payment tools as a breakthrough in modernization in the technology and trade sectors. This term refers to digital money that is not presented in physical form, but all transactions are done virtually. E-money can be issued by service providers in the form of banks or non-banks that have official permission from the government in a country.

About the tourism business, especially the trade-in services. Sellers began to be facilitated by the presence of a digital global market that was able to penetrate national borders. This digital marketplace makes everything limitless. Anyone and at any time can access this market from any part of the world as long as there is internet access.

In the marketplace, the existence of e-money can be found various types, which depend on the data storage media, including prepaid software and prepaid card. In the world of information and technology, the terms digital and virtual are distinguished. Digital currencies must be peer-to-peer connected to banks in the account owner's home country, while virtual money such as Bitcoin does not have to be and looks as if it is real when the physical does not exist.

New problems began to emerge because there is no optimal arrangement related to data identification and verification for digital account ownership in the digital market. For example, a seller of tourism services offers tour packages through this market, where the destination offered is in another country while the person concerned is not in that location. The buyer who does not know the actual condition then accepts the offer. However, finally felt let down after arriving at the location and wanted to file a complaint because the reality faced did not match expectations as displayed on the internet. From this incident began to arise consumer protection issues.

Moreover, looking at the existence of contracts in the digital world made by default by the seller. This can be said to be contrary to Article 18 of Law No. 8 of 1999 on Consumer Protection (hereinafter referred to as "Law 8/1999"), which stipulates the inclusion of standard clauses in offering goods/services in the context of trade is strictly prohibited.

The difficulty is that when this is to be brought to a dispute resolution, it is not impossible to be faced with new problems. Moreover, sellers and buyers come from different countries with different legal systems. The existence of standard digital contracts, which are usually already contained in the terms and conditions on each platform, needs to be refined so that in the future they will be able to provide legal certainty for users of this service.

The emergence of the problem is also allegedly caused because the procedure of identification and verification of data in the process of creating digital accounts in the marketplace is not sufficient. So easy is this digital platform to access anyone that there is often fraud through fake accounts.

This is certainly unavoidable because it is part of the influence of trade globalization. Digitalization on all fronts is one of the concrete manifestations of globalization. The hope is that this paper can be used as a consideration in the framework of legal development in

Indonesia facing the influence and development of globalization, especially in the tourism business sector.

To realize the hope to contribute to the development process in the field of law, the Author proposed two formulations of the problem, namely: How to set consumer protection policies for users of global digital market platform services about dispute resolution? Then about how to model digital contract arrangements as an effort to optimize consumer protection?

The purpose of this study is to find out, understand, and further analyze the regulation of consumer protection policies for users of global digital market platform services about dispute resolution and to further understand, understand and analyze digital contract regulatory models to optimize the implementation of the balance principle for users.

II. Research Method

This research is normative legal research, which is done by researching the law from an internal perspective with the object of the research in the form of legal norms themselves:

2.1 Approach

Looking at the objects studied in this scientific writing, it will be done through several approaches, namely: the legal approach by tracing both vertically and horizontally to find problems in legal norms. Then there will be a case approach, so that it can be known, understood, and solved through this research so that it is expected to achieve the purpose of writing as previously revealed. Finally, a comparative approach will be taken given that the topic discussed in this study is crossborder.

2.2 Methods of Collecting Legal Materials

The method of collecting legal materials is carried out through the search of primary legal materials related to subject topics, both in the form of conventions, international treaties, positive legal products that apply in particular Law No. 19 of 2016 as a change from Law No. 11 of 2008 on Information and Electronic Transactions and Law No. 8 of 1999 on Consumer Protection and its respective derivatives. Next is secondary legal material in the form of books, articles in scientific journals, and websites.

2.3 Legal Materials Analysis Techniques

The technique of analyzing legal materials will be carried out descriptively that will be displayed as is related to legal events, and through comparative techniques by comparing various sources to get a more valid truth. Furthermore, evaluation techniques in the form of recommendations on the refinement of existing legal products and finally the presentation in this writing will be accompanied by argumentative techniques to be able to provide reasonable reasoning and explanation.

III. Research Method

3.1 Consumer Protection Policy Arrangements for Users of Global Digital Market Platform Services About Dispute Resolution

The mechanism of creating an account by entering personal data has not been specifically regulated in legal products. But the context of data protection has been

sufficiently regulated in the Regulation of the Minister of Communication and Informatics No. 20 of 2016 on The Protection of Personal Data in Electronic Systems, as a derivative of the ITE Law.

Regarding the contract policy model is usually listed by default in each digital platform such as this marketplace. In general, rights and obligations, and rules of play in the use of the platform have been agreed upon at the beginning since the creation of the account. Attempts to create fake or fake accounts in a positive legal setting have been designated as criminal acts.

The existence of this marketplace is part of the services offered on social media such as Facebook, Instagram, Twitter, and so on. However, there are also stand-alone platforms such as Alibaba, Aliexpress, Lazada, Shopee, and many more. The stand-alone platform can also use advertising services offered on social media, so often when we use Facebook services or other social media, these marketplace platforms will appear there also in the form of ad views.

Tourism businesses are now starting to take advantage of this service. It's just that digital platforms have not been able to cluster between accounts that are private or corporate. So it tends to be used by irresponsible individuals in conducting trading activities without good faith from the beginning, as if on behalf of a person and/or a particular company.

As revealed in the background related to consumer protection, the process of identification and verification of accounts is of course very crucial to influence, especially when problems arise in the activity of trade transactions and relation to the process of proof. In Indonesia, there is an invention in the form of a new principle related to the protection of the validity of a digital account, called KYC or Know Your Customer. This principle is first used by the OVO platform and some online lending platforms from both banks and non-banks and some insurance services as stipulated in BI Regulation No. 3/10/PBI/2001. Things that are applied in the financing platform can also be adopted and applied in marketplaces and social media, considering that buying and selling activities can be done through social media only without the need to enter the marketplace.

The number of social media accounts popping up on behalf of companies in the field of tourism services, which offer various attractive vacation package promos that are quite tempting because they are offered with complete facilities, attractive tourist destinations, and relatively cheap prices make the importance of regulations about the implementation of KYC is good for marketplace users. specially arranged. At least to be able to create a kind of SOP identification and verification of accounts starting from the beginning of its creation, as well as a preventive step for fraud cases on the internet.

More specifically, problems related to losses in the field of e-commerce in the tourism business, among others:

- a. proof of the data;
- b. the validity of the contract in the digital platform (originality, written terms, signature);
- c. the issue of when the word agree has been deemed to have occurred;
- d. issues of the endorsement, recognition, receipt, and storage of electronic data;
- e. the issue of loss of central bank authority in the capacity as supervision of currency exchange rates, government revenues such as taxes from transactions conducted through digital platforms;
- f. trade hurdle issues arising from policies issued by countries on this across the borderless platforms.

In terms of legal protection provided to service users, it is stipulated in Article 5 Paragraphs (1) and (2), Article 35 of the ITE Law, Government Regulation No. 82 of 2012

on the Implementation of Electronic Systems and Transactions, Permen Komunikasi and Informatics No. 20 of 2016, and Article 4 Number (5) and (8) of Law No. 8 of 1999 on Consumer Protection. Although, it is not so specific to regulate the validity of digital accounts.

Related to the international contract model that should also be used in transactions across borderless marketplaces can be seen in the UNCITRAL Model Law on Electronic Commerce 1996 through Resolution No. 51/162 of 1996 whose purpose is to uniformize users from various countries in the use of specialized computer networks regarding commercial transactions to avoid internet-based fraud.

To further provide legal certainty and strengthen consumer protection, several parameters can be used to test the validity of digital accounts in the marketplace, including tracing the origin of data messages both through the database record of posts, IP addresses, and others, then through integrity and related account information, the validity of location through the domain, and other factors relevant to digital account ownership information.

At least evidence of digital contracts or those that are usually simultaneously loaded in terms and conditions can be recorded either by print or screenshot. Article 18 of the ITE Law is regulated regarding the recognition and affirmation that electronic transactions as outlined in electronic contracts are binding on the parties.

From here at least it can be used as a guideline so that stakeholders and especially consumers who take advantage of the ease of access offered by the marketplace to obtain offers in the field of tourism services business can be more vigilant and careful. To increase consumer awareness, the government can continue to socialize, for example through advertisements that appear on marketplace platforms to provide understanding and increase consumer awareness.

This aims to have a legal certainty given when tourism service business people from Indonesia want to conduct trade activities in the marketplace. Government concern as outlined above and urgency to realize digital account identification and verification arrangements in the context of their validity will help Indonesian businesses to gain confidence in the tourism services business from stakeholders from other countries. In addition, tourism service business people from other countries will get the same treatment, by the application of the principle of non-discrimination in the world of tourism business. If a dispute arises, you can look into the provisions of the UNCITRAL Arbitration Rules, for digital platforms that include this option in their contractual clauses on the digital platform. However, if not, non-litigation efforts will still be pursued as a legal option, before finally taking the matter to the International Court of Justice as an *ultimum premium*.

3.2 Digital Contract Arrangement Model as An Effort to Optimize Consumer Protection

Tourism business activities that utilize e-commerce involve not only sellers and buyers. Other parties involved in it are acquiring or intermediary addicts and at the same time acting as payment intermediaries, then there are so-called Issuers, namely parties that issue cards either consisting of banks / non-banks, private companies that make agreements with overseas companies, and branch companies whose parent is abroad such as American Express. Lastly, there are so-called Certification Authorities who are domiciled as third parties who have the right to issue certifications to the four parties above.

Article 1 Paragraph 17 of the ITE Law stipulates that electronic contracts are agreements between the parties whose manufacture is done electronically. Generally as

mentioned earlier that this form of electronic contract is standard, when the buyer wants to make transactions on the digital platform is forced to agree to the contents of the contract.

To realize the principle of balance between the parties, it can be applied additional principles outside the principles of contracting in general with the aim of harmonization of digital contract forms between countries in the context of tourism business, namely those contained in electronic trade contracts / KDE, especially for digital contracts, the contents of which include:

1. International Principles;
2. The Principle of Jurisdiction of cyberspace;
3. Information Principle;
4. Principle of Confidentiality;
5. Principle of Security;
6. The Standard Principle of Contract;
7. Basic Electronics;
8. Domain Base;
9. The basis of power;
10. The basis of submission;

In addition to referring to these additional principles, it must also be juridically based on the provisions of Article 1320 of the KuhPer as a condition of the validity of the contract and Article 1338 of the KuhPer as a basis for freedom of contract. In the preparation of a standard contract must still pay attention to the Principle of Consensuality which causes buyers to civilize reading and understanding in advance so that there is no element of coercion in agreeing to digital contracts from sellers.

The needs of society go in a direction that is contrary to the will of the law. Parties who run tourism businesses that in this case utilize the marketplace to trade using this standard contract system, cannot be said to be coercive and violate the KUHPer.

Stein in this case states that the default contract is acceptable as a covenant, based on the fiction of a will and trust that awakens the belief that the parties are attached to the agreement because it truly understands all the consequences.

Increasing legal certainty and the fulfillment of the Balance Principle between the parties can be done by optimizing the system on the digital platform of each tourism business. Some business actors already have a fairly adequate system, however, many business actors have not responded to their obligations put forward the principle of good faith in business. Moreover, it is done in a marketplace that if it has a market to the whole world. Thus, adjustments must be made to technology and habits in the international world.

There are two forms of digital default contract models that are developing in the digital world, namely:

1. Clickwrap Agreement;
Held by online merchants who in general the buyer must electronically agree on the terms contained in the digital default contract by clicking on the icons that have been prepared, which contain the writings I Agree, I Accept, Ok / Agree, and so on.
2. Browse wrap Agreement;
Not much different from the previous model. The difference is precisely in this model buyers are required to read the contents of the default contract first. So it can be ascertained that the buyer cannot declare himself forced to not know the clauses in the contract if in the future problems arise.
3. Digital Signature

Done through electronic signatures on digital standard contracting. In positive law in Indonesia, this kind of model has been juridically recognized which is regulated in Article 11 of the ITE Law.

Of the three models offered, it can be seen that the first and second models have given consumers the choice and opportunity to read and understand first before finally agreeing on the contents of the digital default contracts. It needs to be combined with adding a digital signature system to strengthen the validity of the "agreed word element" between the parties.

Along with the development of technology and the increasing influence of globalization, the government must be quick to respond in following existing developments, especially in the context of setting standards of contracted models in the digital world in marketplaces or other digital platforms.

IV. Conclusion

About dispute resolution efforts as a legal fulfillment of consumer protection in the Global Digital Market/marketplace can use international customs as a source of legal reference. Moreover, this is done in the digital world which is borderless and involves parties from various countries in it. The international custom commonly used in dispute resolution refers to International Civil Law as stipulated in UNCITRAL Model Law on Electronic Commerce 1996 through resolution No. 51/162 of 1996. Other options can be made by including the dispute resolution procedure in the Digital Contract as an integral part of the agreement clause.

Furthermore, socialization and education are needed to the public, especially for parties involved in the tourism business in the Global Digital Market or better known as Marketplace, related to business efficiency realized in the form of standard digital contracts that have been applied by business people in the tourism sector. The hope is to be able to fulfill general principles and additional principles that are specific to all parties and avoid disputes.

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