

# Unincorporated Merchant: How Does the Law Protect Consumers in Electronic Commerce?

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## ABSTRACT

Currently, electronic commerce (e-commerce) is a platform that allows merchants and consumers to easily conduct online transactions. Nonetheless, there are a lot of e-commerce business actors who do not yet have legal entity status. The purpose of this research is to discover and examine rules pertaining to e-commerce merchants who are not incorporated, as well as what portions of consumer legal protection are available to consumers. This doctrinal legal research uses statutory and conceptual approaches. The results of the study show that regulatory provisions for e-commerce business actors who are required to be legal entities (incorporated) have been contained in regulations issued by the Minister of Trade, while e-commerce business actors who are not legal entities are regulated in various regulations such as the Law on Electronic Information and Transactions, the Consumer Protection Act, and the Trade Quiet Act. However, the regulation does not explicitly contain e-commerce obligations for legal entities. In fact, the legality of business actors is highly recommended because it guarantees legal protection for consumers if they experience losses in the future. In addition, it is also a potential source of income for countries with tax schemes. Based on this, it is suggested that the government immediately draw up specific regulations so that every e-commerce business actor is not given any other choice but to have a legal entity. It is also necessary to stipulate strict sanctions against unincorporated business actors and result in losses to consumers.

**Keywords:** Merchant; E-Commerce; Incorporated Business;

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## INTRODUCTION

The digital era's technology is continuously evolving and affecting numerous aspects of life. Currently, technology plays an increasingly vital part in our daily routines because it makes everything more efficient, easier, and more affordable in the fingertips of our hands. The internet is an example of technological advancements that are currently being used as a means of economic transactions known as e-commerce.



E-Commerce is an environment or platform for shopping online and is currently a very promising alternative business. According to the Financial Services Authority (OJK), 88.1 percent of internet users in Indonesia have utilized e-commerce services to purchase a variety of products. In this case, electronic trade or e-commerce is also supported by Trade Law Number 7 of 2014. E-commerce provisions in Trade Law Number 7 of 2014 provide understanding, protection, and certainty for electronic business actors and consumers while conducting these business activities via electronic systems. (Desy et al., 2017)

Electronic transactions are also buying and selling transactions that involve an agreement. However, the parties' e-commerce agreements are not like other agreements because electronic transactions differ from conventional transactions. In this context, electronic transactions are governed by Law Number 19 of 2016 Concerning Amendments to Law Number 11 of 2008 Concerning Information and Electronic Transactions, which regulates all electronic transactions and ensures that business actors do not violate the law in their day-to-day activities and transactions. (Sulastri et al., 2021; Widyanto, 2021)

Business activities are closely related to the type of corporate entity and the permits required to operate it. Because legal entities can provide certainty in business activities, so that worries of breaking the law are minimized, the existence of a business legal entity will protect the company from all claims arising from the activities it performs, and keeping in mind that business legal entities have signs that must be obeyed. The company will satisfy the obligations and interests of numerous parties associated to the company, both inside and outside the company, by establishing a legal entity. However, the prerequisites for establishing a corporate legal entity must be met. This is in accordance with Law Number 40 of 2007 on Limited Liability Companies, which states that it must be a capital partnership founded on an agreement, conduct business activities, and be formed through a legal process requiring government permission. (Anjani & Santoso, 2018)

For a rule of law nation, as being declared in Article 1 paragraph 3 of the Republic of Indonesia's 1945 Constitution, Indonesia unquestionably requires regulations as an indicator of certainty in the law. Legal certainty represents one of the aims of the law and can be described as an attempt to attain justice. According to Gustav Radbruch, the form of legal certainty is when the regulation has been passed and stipulated, and the implementation must adhere to the norms and theory. When customers purchase goods or services from merchants that are not legal companies, it will be difficult to file complaints if the purchase has issues. Including who will be sued or held accountable in the event of a consumer dispute. (Moha et al., 2020) On that basis, the purpose of this essay is to examine how the law governs the status of merchants as legal entities and what legal protection can be provided for consumers in the field of e-commerce.

## **METHOD**

This type of research is a type of doctrinal legal research, namely legal research conducted by researching library materials using the object of writing study in the form of existing literature, both in the form of journals, books, relevant articles and laws and regulations that have a correlation with the discussion of the problem, so that this writing is also literature writing (Library Research). The following types and sources of legal resources were employed in the research: primary legal materials, secondary legal materials, and tertiary legal materials. Reading, studying, taking notes, evaluating literature, and looking through other media that is related to the research subject are the legal material gathering techniques used in this research. The analysis utilized in this study is analytical prescriptive, which means that it is based on the author's reasoning that is relevant to the data and then presents a problem-solving solution.

## **ANALYSIS AND DISCUSSION**

### **A. Regulation of Unincorporated Business Actors in E-commerce**

Electronic commerce is one example of internet technology development, and itself is defined as a business activity that uses electronic technology to connect enterprises, consumers, and society through electronic transactions. (Ramli et al., 2023) The legal framework for e-commerce in Indonesia is clearly specified in Trade Law Number 7 of 2014. Prior to the Law, e-commerce rules depended solely on Law Number 19 of 2016 Amendments to Law Number 11 of 2008 Concerning Information and Electronic Transactions. The goal of trade law is to offer certainty and comprehension in the context of e-commerce, business actors, and consumers who conduct trading activities via electronic platforms. These restrictions, however, have not reached consumer protection, taxation, national borders and laws, electronic contracts and security guarantees, electronic payments, and dispute resolution.

There are currently new rules regarding trade through the electronic system that are regulated in the Minister of Communication and Informatics Regulation Number 5 of 2020 concerning Electronic System Operators for Private Scope, as well as regulations for permitting business actors through the electronic system that are regulated in the Minister of Trade Regulation Number 50 of 2020 concerning Provisions for Business Licensing, Advertising, Guidance, and Supervision of Businesses.

E-commerce has become much more sophisticated, consumers face additional dangers when transacting through electronic networks, such as data theft, online fraud, delivery of faulty or incorrect goods, and deceptive promotion of goods, many factors point to the conclusion that consumer rights in Indonesia remain vulnerable to e-commerce activity. (Arifin et al., 2021; Prastyanti et al., 2022)

The National Consumer Protection Agency (BPKN) reported receiving 1,176 consumer complaints in 2020. The trading industry experienced the greatest increase in complaints via the computerized system, with 299 complaints. The government's policy for providing legal protection to parties involved in electronic transactions, (Haganta, 2020) namely consumers and business actors, is currently listed in Consumer Protection Law Number 8 of 1999, but this law is still difficult to reach trading activities through electronic systems. Consumers encounter challenges in e-commerce because of lax law enforcement, which leaves them completely unprotected by the law.

Any individual or business entity, whether in the form of a legal entity or not, that is established and domiciled or carries out activities within the jurisdiction of the Republic of Indonesia, either individually or jointly through agreements to carry out business activities in various economic fields, is defined as a business actor in Article 1 point 3 of Law Number 8 of 1999 concerning Consumer Protection. The laws regulating business actor licensing are outlined in Article 24 paragraph (1) of Trade Law No. 7 of 2014, which states that "business actors conducting trading business activities are required to have a permit in the trade sector granted by the Minister." Regarding business licensing for e-commerce activities, it is governed by Article 15 paragraph (1) of Government Regulation Number 80 of 2019, namely "Businesses are required to have a business license in carrying out business activities in Trading Through Electronic Systems." Furthermore, the Minister of Communication and Informatics Regulation No. 5 of 2020 concerning Private Electronic System Operators emphasizes that registration is required for all Electronic System Operators.

The Regulation of the Minister of Trade Number 50 of 2020 concerning Provisions for Business Licensing, Advertising, Guidance, and Supervision of Business Actors in Trading Through the Electronic System states that "Business Actors are required to have a business permit in carrying out PMSE business activities" specifically in Article 3 paragraph (1). In this case, a business actor is any individual or business entity, whether a legal entity or not, that performs business activities in the field of Trading Through Electronic Systems and can be both domestic and foreign. In this article, business licensing takes the form of a trade business license obtained through an electronic system. Article 1 paragraph (4) makes it clear that business actors dealing through the electronic system, including legal and non-legal companies, must hold a trading business license.

Limited Liability Companies (PT), for example, are legal business entities. In Law Number 40 of 2007, concerning Limited Liability Companies, a company is defined as a legal material that is a partnership of capital, established based on an agreement, conducting business activities with authorized capital that is entirely divided into shares and meets the requirements stipulated in the Law and its implementing regulations.

The Limited Liability Company has its own assets, which are distinct from the assets of the Limited Liability Company's shareholders. In the sense that if the Limited Liability Company incurs a loss, the shareholders' liability is limited to the value of the shares they possess. In contrast to non-legal companies such as *Commanditaire Venootschap* (CV) or limited partnerships and firms, the assets of the founders are not distinct from the assets of the business entity. As a result, if the business entity that is not a legal entity suffers a loss, the owner of the business entity will be held liable.

In addition, the difference between a business entity that is a legal entity and a business entity that is not a legal entity is:

1. Legal entity (incorporated business)
  - a) The legal subject is the business entity itself (acting as human), which categorized as legal subjects before the law;
  - b) Company assets are separate from the personal assets of its management or members. If the company goes bankrupt, only the company's assets will be confiscated and does not include the personal assets of its management or members;
  - c) Examples of legal entities are limited liability companies, cooperatives and foundations.
2. Non-legal entity (unincorporated business)
  - a) The legal subjects are the people who become its management. The company is not the legal entity itself and can't act on its own behalf.
  - b) The company's assets are united with the personal assets of its management or members. As a result, if the company goes bankrupt, the assets of the management and members are also confiscated.
  - c) Examples of business entities that are not legal entities are *Commanditaire Venootschap* (CV) or Limited Partnerships and Firms.

Seeing the distinction between business entities that are legal entities (incorporated) and those that are not legal entities (unincorporated) above implies that forming a Limited Liability Company (PT) for e-commerce activities is safer than other types of business companies. This is based on the provisions of Article 3 paragraph 1 of Law Number 40 of 2007 concerning Limited Liability Companies, which state that the shareholders of the Company are not personally liable for the Company's engagements and are not liable for the Company's losses in excess of the shares owned.

Forming a corporate entity is an important first step in starting a business. Business entities that are legal entities will safeguard the company from any claims arising from the company's operations. Furthermore, with a legal corporation, business actors can safeguard

the public from potentially unsafe items, give complaint services when orders received by consumers are in issue, comply with Indonesian laws, and be taxed. (Saefudin, 2014)

Having this element of legality indicates that the business actor has complied with the applicable legal rules, which indirectly shows disciplined action, and if the business actor is a legal entity, it is also a means of legal protection, because establishing a business entity requires a permit. This has the consequence of generating a sense of security and comfort for both business actors and business consumers. However, many business actor such as merchants have yet to establish incorporated business or legal entity, one of the reasons being that they consider their operations to be small-scale and want to avoid paying taxes. Because business actors in e-commerce include merchants who provide services using an electronic system, e-commerce business actors are included in the category that is required to register and hold a trading business license through the electronic system. Registration of business actors for trading business licenses through this electronic system is a form of legal certainty that will clarify responsibilities for business actors, as well as a place to receive reports and complaints from the public as consumers. With the registration of this business license, (Mucharomah, 2023) it can be a step to prevent problems such as online fraud because the public and consumers can identify business actors through website that have been provided by the government.

Business actors must get a business license and a trade business license using the electronic system (SIUPMSE). The business license, on the other hand, does not apply to Intermediary Facility Operators, which are business actors who supply electronic communication facilities other than telecommunications operators and only act as mediators in electronic communications between senders and recipients, if they are:

1. Not a party that does not directly benefit from transactions;
2. Not directly involved in the contractual relationship of the parties conducting PMSE.

To obtain a business license to conduct trade electronically, business actors can apply to the Minister of Trade via the Online Single Submission (OSS) Agency. The trading business license obtained through the electronic system is only valid if the following commitments are met:

1. Electronic System Operator Registration Certificate issued by the competent authority no later than 14 working days after the Electronic System Trading Business License is issued;
2. Website address and or application name;
3. Customer complaint services in the form of a contact number and/or email address that can be contacted and responded to and displayed clearly on a page that is easy for consumers to read;

4. A consumer complaint service that contains contact information for consumer complaints from the Directorate General of Consumer Protection and Commerce.

This registration can be done online and is free of charge. However, data from the Ministry of Communication and Informatics noted that only 2698 business actors operating electronic systems were registered in the electronic system, while e-commerce business actors in Indonesia, according to data from the Indonesian Central Bureau of Statistics, reached 26.6 million units. (Putri & Dwijayanthi, 2022; Rongiyati, 2019) This means that the implementation of this electronic system registration has not been fully complied with by business actors; in fact, business actors who have registered will benefit from being recorded on the Electronic System Operators registration certificate so that they can be clearly identified on the service page of the Ministry of Communication and Informatics and receive protection as well as legal certainty for parties involved in electronic commerce. With many e-commerce business actors in Indonesia not registering themselves with business licenses, it is difficult for the government to be able to control business through the electronic system.

This Trading Business License through the Electronic System, abbreviated as SIUPMSE, is very essential; if a merchant is not in possession of it, he or she will be subject to administrative sanctions in the form of written warnings, which can be given three times with a grace period of up to 14 (fourteen) calendar days between each warning, and if you still do not have a Trade Business License through the Electronic System within this period, you will be subject to administrative sanctions in the form of fines.

One of the causes for the low number of e-commerce business actors enrolling for business licenses in Indonesia is a lack of socialization regarding the necessity to register and hold business licenses for e-commerce business actors, both legal and non-legal businesses. Furthermore, the government's explanation of the aim and purpose of these regulations is not widely understood, therefore many business players are unaware of the requirements requiring trading business licenses through the electronic system.

## **B. Consumer Legal Protection Against Unincorporated Merchant in E-commerce**

The rapid development of the internet has influenced the growth of e-commerce or electronic business. The emergence of e-commerce in Indonesia might spoil consumers because they can buy without leaving their homes and have access to a diverse range of goods and services. This is also a business opportunity that can benefit entrepreneurs. However, many business players continue to disregard the quality of the goods or services they provide, resulting in losses for the consumers themselves.

Business actors must obtain an e-commerce business license, which is governed by Government Regulation Number 80 of 2019 concerning Trade through Electronic Systems and Minister of Communication and Informatics Regulation Number 5 of 2020 concerning

Private Electronic System Operators. If you do not register, you will receive a letter of warning and may be blocked by the Ministry of Communication and Informatics, as reported by detik.com. The Ministry of Communication and Informatics has sent a letter of warning to PayPal, Steam, Epic Games, and Yahoo to register as PSE Scope private as soon as possible. However, PayPal Cs never registers until the deadline of five working days, and the Ministry imposes a blocking sanction.

Since being prohibited for the first time, Indonesian netizens immediately exploded and the Ministry of Communication and Informatics' blocking of PSE has been widely discussed. The Ministry has finally unblocked PayPal, but only for the time being. The financial transaction service is available for five days till PayPal registers. PayPal claimed in its statement that it is dedicated to following the guidelines and has been registered as a Private Scope PSE. They apologized to users who had been inconvenienced by the blocking issue.

The lack of clear sanctions for e-commerce business actors who do not register, as well as the mechanism and standardization for e-commerce businesses that are required to do so, is currently causing the problem of non-compliance by e-commerce business actors regarding the registration of electronic System Operators. There are still numerous business actors who are not legal businesses and cause a variety of difficulties, such as online fraud and the leakage of consumer personal data.

As stated in the research's background, there are numerous merchants both inside and outside the country who are not legal entities but are nevertheless actively supplying various kinds of goods and or services that can cause problems. The Ministry of Trade said that between January and June 2021, 4,855 consumers filed complaints, primarily in the electronics sector, while statistics from Kominfo revealed 115,756 occurrences of fraud from e-commerce and online transactions on social media through September 2021.

In the Indonesian Civil Code, e-commerce transactions are categorized as sale and buy agreements, therefore e-commerce transactions can also give rise to an achievement or an obligation for a party to execute things that are in an agreement. Default occurs when one party fails to carry out these accomplishments or commitments. Some examples of e-commerce defaults committed by a business actor are as follows:

1. Failure to do what he is committed to do, which is a circumstance in which the seller fails to meet the commitment to deliver an item offered to the buyer as well as the obligation to bear hidden deficiencies;
2. Carry out what was promised but not according to the agreed specifications, where the business actor provides services or is responsible for obligations but does not comply with what was promised or promoted at the beginning before the transaction;



3. Carry out what was promised but it was late; if the order arrived late but could be used, it is labeled as a late achievement; if it could not be used, it is defined as not carrying out what was promised;
4. When a business actor does something that, according to the agreement, cannot be done, such as when the business actor is required not to disclose information and personal data about the buyer to the general public but does so, the action is described as a default.

Transactions through electronic means are regulated in Law Number 19 of 2016 on Amendments to Law Number 11 of 2008 Concerning Information and Electronic Transactions. Article 28 paragraph (1), which reads: "Every person intentionally and without right spreads false and misleading news that results in consumer losses in Electronic transactions," With a criminal threat in Article 45A paragraph (1), namely a maximum criminal prison of six (six) years or a maximum fine of IDR 1,000,000,000 (one billion rupiah). In addition to Law Number 19 of 2016, government actions to provide legal protection for the public are also regulated in Law Number 8 of 1999 concerning Consumer Protection, Law Number 7 of 2016 2014 concerning Trade and Government Regulation Number 80 of 2019 concerning Trade Through Electronic Systems.

The concept of accountability in e-commerce transactions also applies to corporate actors in Law Number 8 of 1999 concerning Consumer Protection, which is governed in Articles 19 to 28. Business actors must be held accountable for compensating consumers for losses incurred as a result of consuming goods and/or services traded, including compensation in the form of replacement goods or refunds.

Rules regarding electronic trading are also contained in Law Number 7 of 2014 concerning trading. If the business actor violates the regulations in Article 65, paragraph (1), which reads: "Every business actor who trades goods and/or services using an electronic system must provide complete and correct data and/or information," And also in paragraph (2), which reads: "Every Business Actor is prohibited from trading goods and/or services using an electronic system that is inconsistent with the data or information as referred to in paragraph (1)." For data and/or information that must be provided, at least include:

1. Identity and legality of Business Actors as Producers or Distribution Business Actors;
2. The technical requirements of the goods offered;
3. Technical requirements or qualifications for services offered;
4. Prices and methods of payment for goods and/or services; And
5. How to deliver the goods.

If a merchant that trades goods on an electronic system fails to give complete and clear information, the business actor may face administrative sanctions in the form of license

revocation under Article 65 paragraph (6) of Law Number 7 of 2014 Concerning Trade. This policy is critical for ensuring legal clarity in the operation of an e-commerce business for both business actors and customers. So that no merchant may conduct business while ignoring consumer protection.

The objective of regulating consumer protection laws is to increase consumer dignity and awareness, as well as to encourage a sense of responsibility for business actors when carrying out their business activities, because basically every citizen has the right to legal protection, one of which is consumer protection, and consumer rights are liability for manufacturers. Consumer Protection Law No. 8 of 1999. The Consumer Protection Act defines consumer protection as "all efforts that ensure legal certainty in order to provide protection to consumers." Consumer protection is carried out to ensure that individuals do not purchase or use goods or services that may risk their safety, and so on.

Article 19 of Law No. 8 of 1999 Concerning Consumer Protection specifies the obligation of business actors who are not legal organizations if a default is identified. Default is governed by Book III Article 1234-1252 of the Civil Code, and it is defined as the failure to meet an achievement or obligation specified by the parties in an agreement. Default compensation is compensation levied to debtors who fail to fulfill the terms of an agreement reached between creditors and debtors.

Article 1249 of the Civil Code specifies how to pay damages for default, with the restitution taking the form of a monetary payment. And. According to Article 1365 of the Indonesian Civil Code, any conduct that violates the law and causes harm to another person obligates the person who caused the loss due to his error to compensate for the loss.

Consumer issues in e-commerce become roadblocks to the introduction of electronic technologies in Indonesia. Consumers are not entirely protected by law due to societal issues such as online fraud, personal data leaks, and insufficient law enforcement in these circumstances. (Yadi et al., 2022) To provide legal protection for the public, there are two legal protection principles: preventive legal protection, which is consumer protection for the public who is given the opportunity to submit their opinion before a government decision becomes final; and repressive legal protection, which is protection aimed at resolving disputes. (Sommaliagustina, 2016)

As an effort to prevent this, business actors should register their business entities so that they become legal entities or incorporated merchants, so that if problems arise, consumers can make complaints and be accounted for. Unlike the platform model so far, incorporated merchants will be fairer to consumers and protect them. For Repressive Legal Protection, the Indonesian government, through the Ministry of Trade and the Ministry of Communication and Information, must require e-commerce business actors to register. This registration aims to make it easier for the government to record and identify e-commerce

actors that are regulated in Government Regulation Number 80 of 2019 concerning Trade Through Electronic Systems and Minister of Communication and Informatics Regulation Number 5 of 2020 concerning Private Electronic System operators. It is mandatory to register every Electronic System operator.

## CONCLUSION

The regulatory provisions for e-commerce merchants who are required to be legal entities are not specifically established in the applicable laws and regulations. This results in a lack of legal certainty for customers and a loss of potential state revenue through taxes. Concerning those relevant to consumer legal protection from e-commerce unincorporated businesses, it has essentially been regulated in numerous rules, but these arrangements are not specified in nature, so they continue to generate difficulties and confusion in their interpretation and implementation. Based on this situation, the government should enact special rules for e-commerce trading, requiring them to have legal entities in order for merchants and consumers to have legal certainty and protection. In its development, the Job Creation Law has regulated all sorts of legal business entities, notably Individual corporations and sole proprietorships. This kind of business entity has the potential to be an alternative for MSME e-commerce businesses to continue to run their businesses professionally and responsibly. Regulations requiring the legal incorporation of e-commerce will also provide the state with potential revenue through a taxation mechanism.

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