

Responsibilities for Platform Providers on Alcohol Beverage Sales through E-Commerce

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Abstract. Trade through the electronic system is now becoming an increasingly popular in society. Aside from these conveniences, the platform can be used inappropriate way for uploader by entering data and/or information that violates the law, both for-profit or other purposes (prohibited acts). Misuse the platform can be detrimental not only to the viewers but also to the platform provider, and that action can be perceived as being involved in unlawful acts. This research aims to understand the oversight mechanism carried out by the platform provider and to understand the responsibilities that must be undertaken by the platform provider for selling an alcohol through e-commerce in Indonesia. The method used in this research is normative juridical. The data in this study are secondary data obtained from primary, secondary and tertiary legal materials. Furthermore, these data are analyzed using qualitative data analysis methods. The results showed that the unavailability of a plot or SOP for handling complaints led the platform provider for not having an obligation to take the abusive users for further follow up.

Keywords: Circular Letter of the Minister of Communication and Information of the Republic Of Indonesia Number 5 of 2016, E-Commerce, Alcoholic Beverages

1 Introduction

Civilization today is characterized by the phenomenon of advances in information technology and globalization that takes place in almost all fields of life. Globalization basically started from the beginning of the 20th century, the time of the transportation and electronics revolution that spread and accelerated between nations, adding in increasing and speed of traffic of goods and services.

Information technology and electronic media are valued as a pioneer symbol, which will integrate all systems, whether in social, cultural, economic and financial aspects. From small local and national systems, the process of globalization in recent years is moving fast, even too fast, towards a global system. The world will become a “global village” that is united, mutual and open, and interdependent.

The merger of computers with telecommunications created a phenomenon that changed the configuration of conventional communication models, by creating something into reality in the third dimension. If the first dimension is hard reality in empirical life (hard reality), the second dimension is reality in symbolic life and formed values (soft reality), then the third dimension is known as virtual reality (virtual reality) which gave birth to another format of society. The trading system that utilizes internet facilities (interconnection networking), hereinafter referred to as e-commerce, has changed the face of the business world in

Indonesia. Besides being caused by the development of information technology, e-commerce was born due to the demands of the community for fast, easy and practical services. Through the internet, the public has more room to choose products (goods and services) that will be used, of course, with the desired quality and quantity.

The development of a platform based on user generated content (UGC) platforms such as a marketplace is now very rapid in Indonesia. User generated content based platform is a trading platform where people can submit themselves as members and have accounts on the platform, and can enter data and/or information into the platform. Furthermore, platform providers provide information on sellers, goods, and/or services sold online to platform users.

However, this development also did not escape from various problems. For example, a user generated content based platform operating license is revoked because the actions of users or platform members uploading content that violates statutory provisions. Abuse by the users using the platform can be detrimental to the platform provider, because the platform provider can be perceived as being involved in unlawful acts. This perception is certainly a scourge for the sustainability of the platform provider business.

Circular of the Minister of Communication and Information of the Republic of Indonesia Number 5 Of 2016 Regarding Limitation and Responsibility of Platform Providers and Merchants for Electronic Commerce (Electronic Commerce) in the form of User Generated Content,[1] created to provide the guidance to platform providers and merchants in terms of limitations and responsibilities in conducting electronic transactions.

Based on the background description above, it is necessary to formulate what is the problem. The formulation of the issues to be discussed in writing this law is:

1. What is the monitoring mechanism carried out by the platform provider on the sale of liquor through e-commerce?
2. What are the responsibilities of the platform provider on the sale of liquor through e-commerce?

The objectives to be achieved with this research are as follows:

1. To find out the monitoring mechanism carried out by the platform provider on the sale of liquor through e-commerce in Indonesia;
2. To understand the responsibilities that must be carried out by platform providers towards the sale of liquor through e-commerce in Indonesia.

2 Method

The method of approach used by the author in writing this law is juridical normative. A normative juridical approach is a study in the field of law that is carried out by examining library material, which is secondary data and is therefore referred to library law research.[2] This type of legal research can also be referred to as a type of juridical-normative research, which is a legal research method by examining literature or secondary data.[3]

The specifications used in the study are analytical descriptive. Descriptive analytical research is conducted descriptively, limited to attempts to express a problem and circumstances as they are. Analytical descriptive is a method used to describe an ongoing condition or condition whose purpose is to provide data about the object of research, so that it can explore things that are ideal, then analyzed based on legal theory or legislation in force.[4] This method illustrates the applicable regulations and is then associated with legal theory and

implementation practices related to the responsibility of agents for data of customers using financial services without offices.

This research is expected to be a descriptive analytical study with the data obtained are as follows:

1. Primary data is data obtained directly from the field results, such as data obtained from interviews conducted by the author related to the object of the problem raised in this paper. The technique used in qualitative research is in-depth interviews. In writing this law the interview was conducted to the Ministry of Communication and Information and one of e-commerce.
2. Secondary data are data obtained from library materials, obtained from data sources relating to e-commerce and alcoholic beverages.

3 Results and Discussion

3.1 Supervision Mechanisms by Platform Providers on Sales of Liquor through E-Commerce

Trading conducted through electronic systems is now becoming an increasingly popular way of trading in society. This is driven by the widespread use of computers and smartphones in people connected to the internet and increasingly sophisticated and spread electronic network system services that can be accessed by the public as well as through trading platforms through electronic systems.

A trading platform through an electronic system in the form of user generated content (UGC) is a trading platform where people can apply for membership or have an account on the platform and enter data and/or information into the platform. The platform provides information on sellers, goods, and/or services sold online so as to create convenience for the public in conducting trade transactions through an electronic system that can ultimately improve the economy of the community.

In addition to these conveniences, the platform is also vulnerable to abuse by account holders and/or uploaders who deliberately enter data and/or information that may violate the law, both for profit or other purposes (prohibited acts). Abuse by the account owner and/or uploader can be detrimental to the platform provider, which can be perceived as being involved in unlawful acts. This perception will become a scourge for platform providers if placement is not placed in the right position, so that it can affect the continuity of the service business.

On that basis, the government through the Ministry of Communication and Information issued a Circular Letter of the Minister of Communication and Information of the Republic of Indonesia Number 5 of 2016 concerning Limits and Responsibilities of Platform Providers and Merchants (Merchant) Trading through Electronic Systems (Electronic Commerce) in the form of User Generated Content. The purpose of this policy is to provide guidelines for platform providers and electronic system providers and merchants in terms of their limitations and responsibilities in electronic transactions in the form of electronic-based trading in the form of user generated content.

Circular Letter Number 5 of 2016 indeed does not mention and explain directly related to the monitoring mechanism that must be carried out by the platform provider. Nevertheless, all forms of platform provider obligations have been mentioned and explained in a limitative

manner in Circular Letter Number 5 of 2016. As for those matters explained in Section (C) Number (1) Letter (a), (b), (c), (d), (e) and (f).

3.2 Responsibilities to Be Done by Platform Providers on the Sale of Liquor through E-Commerce

The responsibility by definition is human awareness of behavior or actions that are intentional or unintentional. Responsibility also means acting as an expression of awareness of the obligation. In law, every demand for accountability must have a basis, namely what causes a person to have a responsibility. Generally, legal responsibility is defined as an obligation to do something or behave in a certain way not to deviate from existing regulations. In civil law, the basis of liability is the mistakes and risks involved in each legal event. Theoretically the liability is related to the legal relationship that arises between the party demanding responsibility with the party claimed to be responsible.

In general, the principles of responsibility in law can be distinguished as follows:

3.2.1 The Principle of Responsibility Based on the Elements of Error

The principle of responsibility based on the element of error (fault liability or liability based on fault) is a fairly general principle applicable in civil law. In the Civil Code, especially Article 1365, 1366 and 1367, this principle is firmly held. This principle states that a person can only be held liable if there is an element of wrongdoing, Article 1365 of the Civil Code which is commonly known as an article about acts against the law, requires the fulfillment of four basic elements, namely:

- a. Actions;
- b. Element of error;
- c. The loss suffered
- d. Causal relationship between error and loss.

What is meant by mistake is an element that is contrary to law. Understanding the law is propriety and decency in society.

3.2.2 Principles of Presumption for Always Responsible

This principle states that the defendant always have responsibility (presumption of liability principle), until it can be proved that being innocent. In the permit principle, the burden of proof is on the defendant. In this case the burden of proof is reversed (*omkering van bewijslast*). This certainly contradicts the presumption of innocence. However, if applied in the case of consumers, it would seem that this principle is quite relevant. If this theory is used, the one who is obliged to prove the error lies with the business party sued. The Defendant must present evidence that he is innocent. Of course consumers cannot arbitrarily file a lawsuit. The position of the consumer as the plaintiff is always open to being sued back by the business actor, if he fails to show the defendant's mistake.

3.2.3 Principles of Presumption for Not Always Responsible

This principle is the opposite to the second principle, in which the principle of presumption is not always responsible only known in the very limited scope of consumer transactions. An example of the application of this principle is the transportation law. Loss or damage to cabin baggage or hand luggage, which is usually carried and monitored by passengers (consumers), is the responsibility of the passenger. In this case the carrier (business

actor) cannot be held responsible. The party charged with proving the error lies with the consumer.

3.2.4 The Principle of Absolute Responsibility

The principle of absolute liability is often identified with the principle of absolute liability. Nevertheless there are also experts who distinguish the two terms above. There is an opinion that states strict liability is a principle of responsibility that establishes error not as a determining factor. However, there are exceptions that make it possible to be released from responsibility, for example in a state of force majeure. Instead, absolute liability is the principle of responsibility without error and there are no exceptions.

3.2.5 Principle of Responsibility with Limitation

This limitation of liability principle can be seen in details in the exoneration clause in a standard agreement made by a business actor.

The law is a means to regulate social life, but the interesting thing is that the law lags behind the object that governs. Thus, there are always signs between law and social behavior that striking distance of difference. If this happens. There will be tension that should be adjusted immediately so that it does not create ongoing tension, even the efforts in this direction are always late. It should be that time that social change can be demonstrated by the laws that govern it, because a change in law will only occur if the two elements meet at the point of contact.

At the beginning the formation of the Circular of the Minister of Communication and Information of the Republic of Indonesia Number 5 of 2016 had the intention to provide guidelines for platform providers and merchants in terms of their limitations and responsibilities in trading through the electronic transaction system in the form of UGC. This was done because the platform providers were considered very vulnerable.

The formation of the Circular of the Minister of Communication and Information of the Republic of Indonesia Number 5 of 2016 is inseparable from the reality that there have been many cases that have harmed the platform providers in e-commerce.

The most important point in the Circular of the Minister of Communication and Information of the Republic of Indonesia Number 5 of 2016 lies in Part (C) Number (2) Letter (a) and (b) that the platform provider responsibilities include:

- a. Responsible for managing electronic systems and managing content on the Platform reliably, safely and responsibly;
- b. The provisions of letter (a) above do not apply in the event of an error and/or omission on the part of the merchant or Platform user is proven.

However, with the status of the Circular Letter of the Minister of Communication and Information of the Republic of Indonesia Number 5 Of 2016 only as part of policy regulations where the circular letter is only an order or explanation that has no legal force, then there is no legal sanctions for non-compliance and tensions between economic actors in making transactions, especially platform providers, will continue because of inadequate legal instruments. In addition, in accordance with the rules contained in Article 6 Paragraph (2) of Law Number 8 of 1999,[5] business actors choose the right to obtain legal protection from the actions of consumers who are not in good faith.

The author urges that the Circular of the Minister of Communication and Information of the Republic of Indonesia Number 5 Of 2016 does not meet or even cannot be used as a guarantee of legal certainty that ideally should be owned by every individual or legal entity

including platform providers because basically, a minister's circular does not have legal force that binds both outside and inside. So Article 6 Paragraph (2) of Law Number 8 of 1999 has not been implemented properly because the platform provider is required to remain legally responsible for all forms of wrongdoing and/or negligence committed by platform users without exception.

4 Conclusion

Based on the research that has been described, it can be concluded as follows:

1. Regarding the complaint mechanism by Shopee and Blibli, the author did not find any flow or Standard Operational Procedure (SOP) for handling complaints, nor found a time limit for Shopee and Blibli in following up on the complaint.
2. In the practice of state administration, the case of the Minister's Circular is not recognized hierarchically in the laws and regulations of the Republic of Indonesia. Even the legal validity of the circular is not regulated in any statutory regulation, however, it becomes an emissary from the government to issue whatever it is considered good as long as it does not conflict with any law. In addition, the substance contained in the Circular of the Minister of Communication and Information of the Republic of Indonesia Number 5 of 2016 is very relevant with the phenomena happening in the society related to the form of protection that must be carried out by platform providers. Part (C) Number (2) Letter (b) which confirms that the platform provider has no obligation to account for errors and/or negligence committed by its users.

References

- [1] *Circular of the Minister of Communication and Information of the Republic of Indonesia Number 5 of 2016 Regarding Limitation and Responsibility of Platform Providers and Merchants for Electronic Commerce (Electronic Commerce) in the form of User Gener. .*
- [2] R. H. Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*. Jakarta: Ghalia Indonesia, 1982.
- [3] S. Soekanto, *Pengantar Penelitian Hukum*. Jakarta: UI Press, 2010.
- [4] Z. Ali, *Metode Penelitian Hukum*. Jakarta: Sinar Grafika, 2009.
- [5] *Law Number 8 of 1999 concerning Consumer Protection. .*