

## Consumer protection on contract information in e-commerce based on the justice value of Pancasila

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### Abstract

The purpose of this study is to examine and analyze consumer protection on terms of contract information in e-commerce based on Pancasila justice value. This study is descriptive analytical, which reveals legislation relating to legal theories that become the object of research in this case the protection of law in electronic commerce related to contract terms information. This research uses primary and secondary data types with data collection method for primary data through: Observation, Interview and Questionnaire. The collected data will be analyzed qualitative Inductively to show Disadvantages of consumer protection that indicate the imbalance of position between business actors and consumers. The findings of this study, The value of the protection of consumer law against the contract terms information in the e-commerce based on Pancasila justice value, is to protect equally between consumers and business actors, providing information on contract terms complete with the contents of contract substance. Legal norms in the formulation of Article 9 and Article 10 paragraph (1) of Law Number 11 Year 2008 regarding Information and Electronic Transactions, which formulate the right of consumers in transactions and the existence of reliable certification bodies of business actors specially regulated by ministerial regulations.

**Keyword:** consumer protection, contract information, e-commerce, Pancasila

### 1. Introduction

Globalization is essentially the expansion of capitalism, because globalization is a process that occurs after the political ideology of capitalist economy becomes the winner in the economic system versus communist economic rivalry from 1945 to 1989. The ideology of globalization from its appearance is very beautiful and interesting but it turns out to hide crimes known only to the victim <sup>[1]</sup>.

Business activities via the Internet or commonly called electronic business transactions or electronic commerce (electronic commerce abbreviated e-commerce, also called cyber-commerce or c-commerce abbreviated), has become a global or international trend. Indonesia certainly can not isolate itself from the use of the internet by the Indonesian nation and close access to electronic commerce. Especially in Islamic law, until this moment e-commerce is not a polemic among the scholars. The applicable rules relate to al-'ādat and 'urf. In this case for example "al-'ādatu muhkamātun." (Common customs of society, can make legal traditions). Legal basis in muamalah study, akad e-commerce can be Qiyash-ed (qiyas is one way of determining Islamic law by using logic analogi) with law as-salam or salaf (language means submission) <sup>[2]</sup>. According to Haris Faulidi, the forerunner of e-commerce in the time of the Prophet, which is marked by the letter of al-Baqarah verse: 282.

This explains that today the world is within the framework of a new paradigm of trade. Trade utilizing this information technology raises the diversity of trading activities, especially unlimited net-based commerce activities as a

result of unlimited communication space. this Unlimited trading space has in fact become the very limit of national laws because of the national law ability to work is only limited to nation state border (nation state). In fact, national laws in any country are always linked and bound by the sovereignty of the country.

The use of the Internet as a trading space actually adds to the type of crime or misuse in information technology. That is, the current crime in the cyberspace which is not only limited to the computer as a space or place of information that can be compromised, but the instrument itself in the potential trade to create new types of crime or unlawful acts of civil law and wanprestasi (Not Fulfilling the obligation) that is not easily resolved as in the real world. In Indonesia in fact there are also Law Number 8 Year 1999 regarding Consumer Protection (hereinafter referred to as PK Law) as well as Law Number 11 Year 2008 on Information and Electronic Transactions, amended by Law Number 19 Year 2016 on Amendment to Law -The Number 11 of 2016 on Information and Electronic Transactions (hereinafter referred to as the ITE Law).

The provisions govern which contract terms are complete and correct. The problem arises, of course, relates to the complete and correct information standard regarding the terms of contract <sup>[3]</sup>. Article 7 Sub-Article b of the PK Law also provides that "the obligations of business actors provide true, clear and honest information regarding the condition and guarantee of goods and / or services and provide explanations of use, repair and maintenance".

Reliability certification is a sign of trustworthiness in the electronic trading business, but it is in no way negates (eliminates) electronic trading practices without having a certification of reliability. That is, complete and correct

<sup>1</sup> Anis Mashdurohatun, *Mengembangkan Fungsi Sosial Hak Cipta Indonesia (Suatu Studi Pada Karya Cipta Buku)*, UNS Press, Surakarta, 2016. P: 255

<sup>2</sup> Ahmad Warson Munawir, 1998, *Kamus Bahasa Arab Indonesia*, Ponpes Munawir, Yogyakarta. P: 205

<sup>3</sup> Article 9 of UU ITE explanation

information relates to contract terms below the trust mark standards (trademarked brands) coloring the trade electronically. This remains a potential source of electronic commerce entrepreneurs who harm consumers.

Based on some cases of fraud on the sale and purchase site electronically that do disregard who the victim is even the minister of Youth and Sports at that time, Roy Suryo could be deceived when he intended to buy fixie bike advertised by the perpetrator on OLX.co.id, Roy Suryo interested and already Sends one million rupiahs as required by the perpetrator, but after being sent, the perpetrator does not deliver the goods ordered, it is an urgent to examine the variation of contract terms used by business actors in electronic trading based on the category as stipulated in Article 9 of Law Number 11 Year 2008 on Information and Electronic Transaction as well as Article 7 Sub-Article b of Law Number 8 Year 1999 on Consumer Protection and the weight of justice. Variations in terms of contracts and electronic contracts explained in the pattern in electronic trading, whether to the business actively which has or has not obtained certification of reliability. From that description the author would like to discuss it further on how is the consumer protection on contract Information in E-Commerce Based on the Justice Value of Pancasila.

Paradigm <sup>[4]</sup> That underlying this writing is the paradigm of constructivism, because this study is intended to produce a reconstruction of thoughts or ideas concerning consumer protection in electronic commerce with respect to information on terms of a contract based on the value of justice. In the methodology dimension <sup>[5]</sup> the approach method used is hermeneutic and dialectical method to reach the truth.

Research on the construction of consumer protection in electronic commerce related to information on contract terms based on the value of justice is a non-doctrinal legal research with this type of research is often called socio legal research. This study is descriptive analytical, which reveals

<sup>4</sup> Paradigm interpreted as a frame of reference or perspective that became a basis of belief or foothold of a theory. Paradigm is a foothold in seeing a reality, how we see things, what is considered a problem, what methods used to settle it. Thomas Kuhn, *The Structures of Scientific Revolution*, the Dwi Widodo Putro, 2011. *Criticism of the Paradigm of Legal Positivism*, Genta Publishing, Jogjakarta, p : 2. While Guba defines that the paradigm is the basic system concerning the fundamental belief in the world of the object studied (Worldwiew) which is the guide for the researcher. Guba and Lincoln, 1944, *Computing Paradigms in Qualitative Research*, *Handbook of Qualitative Research*, London, Sage Publication, p : 105. Paradigm help formulate what should be learned, what problems must be answered, how should answer it, and what rules should be followed in interpreting the information collected in order to respond to these issues. George Ritzer, *Sociologi: A multiple paradigm science*, translated by Ali Mandan, *Sociology of Science paradigm Ganda*, Eagle Press, Jakarta, 2011. P : 7. The paradigm is a set of beliefs or basic beliefs that menuntun someone in the act in everyday life and in scientific research. Agus Salim, 2011, *Theory and Paradigm of Social Research (From Densin Guba and Its Application)*, PT. Tiara Wacana, Jogjakarta. P : 33, see also Liek Winarjo, which states that the paradigm is "belief ondering frame work", which means that the basic assumptions that are believed scientists and determine how he sees ditelaahnya symptoms. It can include codes of ethics, as well as worldviews that influence the way of thought and behavior of scientists in science. Liek Wilarjo, Loc.Cit.

<sup>5</sup> Methodology focuses on how we gain knowledge from the world. Norman and Yvonna S. Lincoln. Op.cit. P. 123 whereas Agus Salim states that in the methodological dimension, a scientist must answer the question: how is one used in discovering the truth of a science. Agus Salim. Op.cit. P : 35

legislation relating to legal theories that become the object of research in this case the protection of law in electronic commerce related to contract terms information. This research uses primary and secondary data types with data collection method for primary data through: Observation, Interview and Questionnaire. The collected data will be analyzed qualitatively Inductively.

## 2. Research result and discussion

### i) Consumer Protection Concept based on Law Number 8 Year 1999 About Consumer Protection Law (UUPK)

Consumer protection itself according to Article 1 paragraph (1) UUPK mentions that "Consumer protection is any effort that ensures the existence of legal certainty to provide protection to consumers". Az. Nasution mentions the definition of consumer protection law is the overall principles and rules that regulate and protect consumers in the relationship and the problem of providing and using the product (goods / services) consumers between providers and users, in community life. Article 2 UUPK mentions "consumer protection based on benefits, fairness, and equilibrium, consumer safety and security as well as legal certainty." In the explanation of Article 2 UUPK mentions consumer protection held as a joint effort based on 5 (five) relevant principles in national development, that is :

- a. The principle of benefit is intended to mandate that all efforts in the implementation of consumer protection shall provide the greatest benefit to the interests of consumers and entrepreneurs as a whole.  
The principle of justice is intended that the participation of all people can be realized maximally and provide same opportunities to the consumer and business players to obtain their rights and perform their obligations fairly.
- b. The principle of equilibrium is intended to provide a balance between the interests of consumers, business actors, and governments in the physical and spiritual sense.
- c. The principle of consumer safety and security is intended to provide assurance of consumer safety and safety in the use, use and use of goods and / or services consumed or used.
- d. The principle of legal certainty is intended for both business actors and consumers to obey the law and obtain justice in the implementation of consumer protection, and the state-guaranteed legal certainty.

According to Article 3 UUPK, consumer protection aims to:

- a. Increase awareness, ability and independence of consumers to protect themselves;
- b. To raise the consumer's dignity by avoiding it from negative access to the use of goods or services;
- c. Improve consumer empowerment in choosing, determining and demanding their rights as consumers;
- d. Creating consumer protection that contains elements of legal certainty and information disclosure and access to information;
- e. Growing awareness of business actor affirms the importance of consumer protection so as to grow an honest attitude and responsible attitude.
- f. Improving the quality of goods and / or services that ensure the viability of goods and / or services production, health, convenience, security, and consumer safety.

According to Johanes Gunawan, legal protection against consumers can be done before the transaction (noconflict / prepurchase) and / or at the time after the transaction (conflict / postpurchase).<sup>6</sup> Legal protection to consumers that can be done before the transaction (noconflict / prepurchase) can be done by:

- a. Legislation, which is the legal protection of the consumers conducted prior to the transaction by providing protection to the consumers through the legislation that has been made. So that the existence of the legislation is expected to obtain protection before the transaction, because the terms and conditions that govern the transactions between consumers and entrepreneurs.
- b. Voluntary Self Regulation, which is the legal protection of the consumer conducted at the time before the transaction, where in this way the business is expected to voluntarily make rules for himself to be more careful and vigilant in running his business<sup>[7]</sup>.

As for the legal protection of the consumer upon the occurrence of the transaction (conflict / post purchase) can be done through the District Court (PN) or outside the Court by the Consumer Dispute Settlement Agency (BPSK) based on the choice of the parties to the dispute.

Legal protection of the consumer is necessary because the consumer is in a weak position. Differences in interests between business actors and consumers lead to physical, personal or consumer property damage and no optimal benefit from the use of such goods and / or services and the poor law protecting the importance of consumers. With the legal protection for consumers, is expected to provide a balanced legal position between consumers with business actors. It is quite reasonable because so far the position of the weak consumer when compared with business actors.

## ii) Electronic Trading in Law Number 11 Year 2008 on Information and Electronic Transactions (UU ITE)

Electronic commerce (e-commerce), as mentioned above, has become an international phenomenon, including Indonesia who is utilizing advances in information technology, especially the Internet in various fields. Nonetheless, as expressed by Elizabeth Goldsmith and Sue L.T. McGregor, that the impact of electronic commerce on consumers is being tested<sup>[8]</sup>. Actually it is not only related to consumers, but also business actors (entrepreneurs) or parties who facilitate electronic commerce or electronic system providers. Similarly, what happens in Indonesia. Electronic commerce in Indonesia is increasingly booming, ranging from simple to complex management. Thus the scope of issues that potentially affect consumers, entrepreneurs, parties who facilitate electronic commerce is also increasingly spreading. Such problems surely surpass what appears to be conventional trading as it does in the real

world. Based on statistical data from Business Startup, the rapid growth of e-commerce market share in Indonesia is extraordinary. With the number of internet users reaching 82 million people or about 30% (thirty percent) of the total population in Indonesia, the e-commerce market becomes a very tempting gold mine for some people who can see the potential for the future. This growth is further supported by data from the Minister of Communications which states that the value of electronic commerce or e-commerce transactions in 2013 reached Rp. 130 trillion. This is a fantastic number considering that only about 7% (seven percent) of internet users in Indonesia have ever been shopping online. The actions and demands of consumers in the public sector are largely abandoned Considerations in review Although it has been frequently maintained in such a sector In that sector d & dquo; Consumers & dquo; The problem is most serious (see, eg, McKean, 1973), we have excluded this area. This exclusion is partly due to space limitations<sup>[9]</sup>.

Collective agreements in electronic contracts relate to the supply and acceptance of parties, which are often informed of the terms of the contract not understood by the parties for various reasons, such as skipped behavior (not reading in its entirety, but passing on as if already knowing and accepting Clause), mainly by the buyer. The weakness of such buyers or users should be sustained by the balance of rights and obligations between the buyer and the seller through the terms of the contract made by the organizer of the electronic system. Terms of contract in electronic trading are usually made by electronic agent providers in the form of standard or standard contracts, not business actors (except those business actors as well as electronic agents). In that context, it may be technically-electronic a contract is considered valid, but substantially does not reflect justice because there is more interest protection on one side and less on the other. This relates to 2 (two) important issues, namely (1) fairness in the context of electronic contract validity, and (2) fairness in the context of consumer protection.

In fact electronically, regardless of the circumstances of the buyer or the consumer in relation to the contents of the contract, the electronic form of the contract and information regarding the terms of the contract obtain its validity, as determined by Articles 5 and 6 of the ITE Act. The provision that marks the new regime of Indonesian contract law, which governs electronic contracts, although it is still very simple. This is the case in Germany, as revealed by Gerald Spindler and Fritjof Börner that:

*Generally speaking, contracts may be concluded without any formal requirements (principle of absence of formal requirements), unless a specific form is required due to a contractual stipulation or a statutory provision. There are usually statutory formal requirements where there is a need to protect the party making the declaration from over-hasty declarations (warning purpose) or to disclose to him or her the content of the legal act (clarification and evidentiary purpose).....*

*Under current law, a contract may be concluded*

<sup>6</sup> Johanes Gunawan, 1999, *Hukum Perlindungan Konsumen*, Universitas Katolik Parahyangan, Bandung, p : 3

<sup>7</sup> *Ibid*, p : 4

<sup>8</sup> Elizabeth Goldsmith and Sue L.T. McGregor, 2000, "E-Commerce: consumer protection issues and implication for research and education", dalam *International Journal of Consumer Studies & Home Economics*, Vol.24, Issue 2, p : 124 (124-127), downloaded from Wiley Online Library, [onlinelibrary.wiley.com/doi/10.1046/j.1365-2737.2000.00150.x/full](http://onlinelibrary.wiley.com/doi/10.1046/j.1365-2737.2000.00150.x/full)

<sup>9</sup> Folke & Ouml; Lander, H & Aring;Kan Lindhoff, *Consumer action research: A review of the consumerism literature and suggestions for new directions in research, Trends and developments Courants et tendances*, Downloaded from [ssi.sagepub.com](http://ssi.sagepub.com) at University of Manchester Library on May 9, 2015, P : 147.

*electronically only if this can be done in the absence of formal requirements. Thereof a variety of agreements currently cannot be validly concluded over the Internet. This legal situation will, however, change if the Formal Requirements Amendment Act is adopted into law inasmuch as Article 1 no.2 FormG provides that a paragraph 2 must be inserted into § 126 BGB. Pursuant to this amendment, the written form may be replaced by electronic form, unless otherwise prohibited by law. Electronic form is governed by § 126a BGB, and requires that the person making the declaration add his or her name and provide the electronic document with a qualified digital signature pursuant to the Signature Act. In the case of a contract, each of the parties must sign an identical document in the manner describe above (§ 126a (2) BGB) [10].*

### 3. Justice in the Context of Electronic Contract

The ITE Act does not actually fully regulate electronic contracts. The term "electronic contract" is only used in two Articles, namely Article 1 number 17 of the ITE Law - on the understanding - and Article 18 paragraph (1) of the ITE Law - concerning the nature of which is binding on the parties in electronic transactions. Based on these provisions it can be said that the ITE Law does not regulate anything about electronic contracts, especially the fair electronic contracts. The ITE Act is more likely to regulate "matters relating to electronic contracts". It may be understood that electronic contracts rest on the principles and norms contained in the provisions of conventional contracts as provided for in the Civil Code. It becomes ironic because the electronic contract in terms of its formation is still very problematic, as expressed by Chris Reed and John Angel:

*The question of contract formation across electronic networks is problematic to say the least. This is due not only to the interjurisdictional issues that arise as a natural result of the borderless nature of the networks, but also to the issues that arise when considering the terms of any contract that might be formed. Such issues arise because of the need to consider any overriding legislation which may affect the freedom to contract in the jurisdiction in which the contract was formed or under the law chosen in the contract [11].*

Furthermore it is said that not all electronic transactions taken through electronic communication resulted in the formation of contracts. Although a number of attempts were made to classify electronic messages based on different legal issues, Chris Reed and John Angel widely distinguish three categories of electronic communication results, into :

- a. *Transmission of mere information*
- b. *Transmission of unilateral notices*
- c. *Contract-formation messages* [12]

The distinction indicates that the definition set forth in Article 1 number 17 of the ITE Law still requires interpretation when confronted with the facts of electronic communication. Likewise, its principles and norms require development which includes specific matters in electronic contracts. This is important because based on data from survey results indicating that consumers trade electronically

for B2C, instead of knowing whether or not it is valid of their contracts with online stores, more than 90% are unaware of any electronic contracts they have to agree to when they do transaction. As Abdulhadi M. Alghamdi said, that :

*Parties entering into electronic contracts may be left to seek guidance from traditional paper contracting. Although these traditional rules are important and developed over hundreds of years, they may be inadequate to address some unique issues that arise in the field of electronic contracting. It is obvious that fax, telephone, and telex can be used to create a contract, while it requires careful analysis and analogy to reach the same conclusion in the case of contracting over the Internet. When concluding transactions over the Internet, the concern is to ensure that the contract is valid, binding, and enforceable [13].*

(The parties who enter into electronic contracts may be left to look for guidelines from traditional paper-contracts. Although these traditional rules are important and developed over hundreds of years, they may not be sufficient to address some of the unique problems that arise in the field of electronic contracts. Fax, telephone, and telex can be used to make contracts, while it requires careful analysis and analogy to reach the same conclusion in the case of contracts through the Internet. In closing transactions over the Internet, the concern is ensuring that the contract is valid, binding, and implementable.)

Regardless of the specific issues and unique issues in electronic transactions, the potential for creating injustices in electronic contracts and matters relating to electronic contracts. Conventionally valid (valid), but possibly electronically invalid, so it is not binding, and can not be implemented or enforced. In that context, the judgment of justice finds its significance. As Abdulhadi M. Alghamdi said in the common law perspective that :

*The formation of contract under common law relies on the basic elements of an offer, unequivocal acceptance, consideration, and an intention to create legal relations. In electronic transactions, it may not always be clear which party is making an offer in the contract sense and which one is accepting. Traditionally, the law considers that an agreement is formed when a party makes an offer and the other party accepts that offer. This requires the matching of the two communications of offer and acceptance [14].*

The contract or agreement displayed on the site requires the user to click on the button to indicate their acceptance that is generally non-negotiable. In theory, they should offer the buyer the opportunity to read, view, and download as a whole before being accepted [15]. This condition may give rise to the issue on how to display terms and conditions that may constitute an informed consent to the buyer and whether the mutual assent is really mutually agreed by the parties to the terms of the agreement. In practice, most online retailers, such as Amazon, have procedures that combine e-mail notification after clickwarp action to improve the validity of the clickwarp agreement [16]. E-mail notices indicate protection to the interests of business actors

<sup>10</sup> Gerald Spindler dan Fritjof Börner, Ed., 2002, E-Commerce Law in Europe and the USA, Berlin Heidelberg New York: Springer, p : 171.

<sup>11</sup> Chris Reed and John Angel, Ed., 2003, Computer Law, Oxford New York: Oxford University Press, p : 333.

<sup>12</sup> Ibid., p : 334-335.

<sup>13</sup> Abdulhadi M. Alghamdi, 2011, The Law of E-Commerce, E-Contract, E-Business, Bloomington: AuthorHouse, p : 225.

<sup>14</sup> Ibid., p : 71.

<sup>15</sup> Faye Fangfei Wang, Op. Cit., p : 36-37.

<sup>16</sup> Ibid., p : 27.

and consumers, sellers and buyers, and even the interests of online stores that facilitate trade transactions. The provision of e-mail notification is important to all parties involved in electronic commerce, as well as explaining equitable distribution of justice as John Rawls views as it reduces the risk of all parties, including consumers or buyers.

In Indonesia, there seems to be no standard on contract terms, except Article 9 of the ITE Law, so that each online store makes different terms. Article 9 of the ITE Law stipulates that "Business actors offering products through Electronic Systems shall provide complete and correct information relating to the terms of the contract, the manufacturer and the products offered." Elucidation of Article 9 of the ITE Law stipulates that: "Complete information" And correct "including:

- a. Information containing the identity and status of the legal subject and its competence, whether as a producer, supplier, organizer or intermediary;

Other information that describes certain matters to which the agreement is valid and explains the goods and / or services offered, such as the name, address, and description of the goods / services.

The ITE Act through Article 9 only describes "complete and correct information" of which the terms of the contract, but the terms of the contract itself are not regulated. Whereas the weight of justice is not just about sharing the information, but the substance of the informed matter, such as the terms of the contract and the contract itself.

The lack of arrangements regarding the terms of the contract and the electronic contract can be understood in relation to the principle of freedom of contract. However, in terms of consumers, it has significance. The interest lies in the protection of consumer rights in electronic trading contracts. The problem, Article 9 of the ITE Law does not cover the entire trading conditions electronically, ie the terms of the contract are not always made by the business actor, in the sense of the seller. In a particular format or type of online store a business actor is simply a user of electronic trading systems, as well as buyers. Terms of the contract have been determined by the online store - which is not always a seller, but only facilitation. The ITE Law calls such online stores as "organizers of electronic agents <sup>[17]</sup>" as governed by Article 21 of the ITE Law. Therefore, fairness in relation to contracts depends heavily on contractual requirements determined by online store managers, who can only be facilitation (as a mere electronic system provider) or may also be a seller in addition to facilitating it.

The provisions of Article 20 paragraph (1) of the ITE Law are not fully effective because in practice, the offer and acceptance may be canceled because one party, in particular the business actor does not meet the agreement but is deemed to be prevalent or non-default, such as the goods have been sold or the goods have been postponed (Delivery date pending) for no apparent reason. As experienced by one of the consumers, just get information that "delivery date pending: you'll get an email as soon as we can provide you with a delivery estimate" and in other sections stated

"we'll email you when available" <sup>[18]</sup>. Much of the information provided by online stores or electronic systems that facilitate electronic transactions, does not seek approval of the parties to the terms of the contract. This concept is expected to encourage Law enforcement Marks offense. Registered alerts must have exclusive state rights. Rights are valid Certainty enjoyed by the owner that his rights should not be duplicated by other parties <sup>[19]</sup>.

Terms of the contract are informed in the form of document files that can be opened at any time, but its not required to open it on every (new) transaction. In case an online store is a seller as well as an organizer of an electronic system, it can reflect an inequality because the buyer is "forced" to accept contract terms based on information that does not require approval. Such "coercion" is due to information about the terms of the contract, and the terms of the contract itself, or contracts for each transaction are "standard", there is no bargaining mechanism as conventional transactions. When Article 18 of the ITE Law provides that "the parties have the authority to select the law applicable to the international electronic transactions they make", it can not be fulfilled in practice.

#### 4. Justice and Information on Electronic Contract Terms of Trade in Relation to Consumer Protection

Contract terms information in literature and practice in various countries are often poured using the term "the terms and conditions" - in Indonesian it is often translated into "syarat dan ketentuan". The phrase is the rights and liabilities of the parties to the contract. This is very important because it defines the terms and conditions of a commercial contract that clearly reflects the terms and conditions that have been negotiated and agreed upon by the parties. A poorly designed contract will increase the risk of misunderstandings and trade disputes that could result in delays in payments or performance, compensation, and dispute guarantees <sup>[20]</sup>. According to Faye Fangfei Wang, the complexity or number of terms and conditions varies by different causes, including transaction scale, service complexity. As Fangfei Wang said that: *The number of terms and conditions is decided in accordance with the importance of the transaction. For example, large-scale transactions often produce contracts of considerable length and complexity including standard form clauses, such as exclusion and limitation clauses. Many companies spend substantial sums of money on legal advice in relation to the drafting of their standard terms of business. It is always prudent to read the available terms and conditions and take adequate step to ensure that those terms and conditions are incorporated into the contracts which they conclude* <sup>[21]</sup>.

Faye Fangfei Wang also asserted that there is a relationship between terms and conditions on the one hand and justice on the other. This includes the conditions before and after

<sup>18</sup> An interview with Ahmad, online shop buyer on March 7, 2017, for the purchase of a book on Amazon.com. Purchases made since February 9, 2017, but until March 7, 2017 have not yet been submitted yet.

<sup>19</sup> Bakti Trisnawati, Gunarto, Anis Mashdurohatun, *The Legal Protection To The Owner Of Registered Mark Based On The Value Of Justice International Journal of Business, Economics and Law, Vol. 11, Issue 4 (Dec.) ISSN 2289-1552, 2016 p : 111.*

<sup>20</sup> Faye Fangfei Wang, Op. Cit., P : 66.

<sup>21</sup> Ibid.

<sup>17</sup> [Organizer] an electronic agent is a person who organizes / manages devices from an Electronic System made to perform an action against a certain Electronic Information automatically. (Article 1 number 8 of the ITE Law)

the contract is closed. As revealed that : *The availability of terms and conditions (T&C) is of great importance prior to and after the conclusion of a contract. This is to ensure the fairness between two parties, in particular in the context of the usage of standard terms. Once terms and conditions are agreed by the parties, they become effective and binding unless the parties can prove that there were vitiating factors such as mistake or misrepresentation.*

In order to analyze the basis of fairness in consumer protection in relation to contract terms information in electronic commerce practices, it is necessary to present the contract terms information in online stores, each

representing different types of online stores, that is:

- (1) The online store only facilitates the seller's advertising, so the contract between seller and buyer takes place outside the online store, and does not involve online stores; and
  - (2) The online shop facilitates the advertisement of the seller and other facilitation, thereby becoming a third party in the contract between the seller and the buyer;
- The online stores become sellers, so he have a contractual relationship with the buyer.

Comparison of the 3 (Three) Model of *Online Store* Based on the terms of contract Information

Table 1

	Facilitator of the seller's advertising (Model 1)	Facilitating and involved in the contract (Model 2)	As a Seller (Model 3)
Terms of contract Information	Restrictions on sellers or buyers tend to be the same, ie as a users. Online store managers do not take into account the importance of transactions that occur "outside" the store.	Treat sellers and buyers differently (more colorfully than Model 1) because online stores consider the interests of each party transacting "inside" the store.	Much more considered the interests of the seller than the buyer (as compared to Models 1 and Model 2) because online stores are sellers who have a direct interest in "terms and conditions"
Responsibility	Consistently contains the waiver of online store responsibility for all conditions of the seller-buyer contractual relationship, even to the seller or buyer's information in the online store.	Tends to waive online shopkeeper responsibility for buyer's risk or wrong or unlawful information by the seller or the buyer.	Tend to free sellers are responsible for any risk buyers, even that caused by seller mistakes.

In this way of view, this study focuses more on justice in the context of consumer protection. Therefore, it can not be freed from the issue of consumer rights. As the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce argue that consumer rights are important because in electronic commerce, consumers are easily overlooked in fundamental (sales) basics or services to consumers. In fact, often found a well-meaning and reputable online businesses fail to provide basic contact information, essential contract terms, and information on how to resolve complaints or demand redress [22].

In the case of the first type of online shop - which merely mediates between seller and buyer (consumer) in B2C - its role in the context of consumer protection only makes provisions limiting or limiting access to online stores, which sellers and buyers make offers and reception. Bukalapak.com as an example, brokers a meeting of the will between the seller and the buyer, but accompanied by its role in the transaction through the payment mechanism of the buyer-Bukalapak-seller. In Bukalapak's online store model it is important to know when contracts are made and parties involved in contracts and responsibilities respectively. Unlike Bukalapak, at the olx online store, a deal on buying and selling takes place outside the

facilitation of an olx online store, including no payment system facilitation. That is, at the online olx store, when the deal is happening outside the online store.

Based on the example of "Rules of Use" made by Bukalapak.com, there is an imbalance of interest protection between buyers and sellers. This imbalance can mean injustice. The absence of standards prescribed by legislation, the interests of the buyer or the potential consumer is underfunded. For example, in the "deals" section it is affirmed that: The buyer can not cancel the transaction after paying off the payment. If the Footprint does not deliver the goods within the delivery deadline since the payment (4x24 hours for regular shipping fee or 2x24 hours for the express delivery charge), then the seller( Or "Pelapak" in Bukalapak.com terms) is deemed to have refused the order. Thus, the system automatically provides negative feedback and repulsed order reputation, and refunds the refund to the buyer;

If the buyer can not cancel the transaction after paying off the payment, then there should be an agreement, so the seller has the obligation to deliver the goods according to the buyer's choice. As it turns out, the provision, allowing the cancellation is not due to default of the buyer, but because the seller does not ship the goods within the delivery deadline. That is, the seller (pelapak) who did the default. The condition can also occur based on the experience of a buyer, namely "goods ordered by the buyer turned out to be in the supply of footprint has run out".

<sup>22</sup> OECD Guidelines for Consumer Protection in the Context of Electronic Commerce, diunduh dari <https://www.oecd.org/sti/consumer/2091663.pdf>, date of access: 31 March 2016.

Buyers are forced to accept money back or order other goods. Buyers only get negative feedback as sanctions<sup>[23]</sup>.

The condition from the perspective of John Rawls's theory of justice, the inequality of position between the seller (pelapak) and the buyer - as the party with the weaker position, necessitates reinforcement. Although the principle of freedom of contract also includes contracts in electronic commerce, the principle of inequality should be considered for justice. Based on the principle of difference (difference principle), buyers or consumers who have different positions with sellers or online stores need to be protected through "controlled policies" that benefit it.

## 5. Consumer Protection Value and Norm In E-Commerce

The Constitution has a position that is very important for a country. The Constitution also will be the basic rules of how the country will be run. Constitutionally every citizen has the same rights and obligations, including transacting both manually and online (as governed by the ITE Act).

Information Terms of Justice-Based Values Contracts Information contract terms in electronic commerce, from a consumer's point of view, should determine or influence a consumer's decision to proceed until the close of the contract or leave not to close the contract. Although the limitations on contracts in the B2C have been determined by the Consumer Protection Act, the ITE Law, and Government Regulation No. 82 of 2012 on the Implementation of Electronic Transaction Systems and Transactions (PP PSTE), there are still issues in electronic trading practices, Can fully guarantee consumer protection. Individual consumer behavior and conditions shared by Commons and humanity. Complexity, rise of the relation concept are introduced as a tool to reframe FCS Understanding on Consumerism so that it can be interconnected with goodness and wellbeing<sup>[24]</sup>.

The provisions of government regulation (PP) Article 49 of the PSTE only govern with respect to the contract terms information, namely "providing complete and correct information", whereas against contracts on "providing clarity of information". Apparently for any breach or non-fulfillment of obligations to the provision of this complete and correct information, PP PSTE shall not impose any sanction, including non-threatening by imposition of administrative sanctions as regulated by Article 84 of PP PSTE.

The absence of administrative sanctions for violations of Article 49 Paragraph (1) of the PP PSTE indicates a policy that is incomplete and correct information is a criminal or civil matter, so it does not use the provisions of the ITE and PP PSTE Act, but general criminal or civil law. In other words, the violation of Article 49 paragraph (1) of PP PSTE is cyber crime or Not Fulfilling duty (wanprestasi) or acts against civil law. This is of course very dependent on the active attitude of consumers as parties who are harmed in electronic transactions to sue or prosecute in criminal, at least complaints on business actors.

Some of the weaknesses of contract terms information that potentially lead to a weak position for consumers can be put forward as follows :

1. Contract Terms Information Aim at Unbalanced Raw Contracts
2. Contract Terms Information Difficult Accessed
3. The contract terms information is not complete and clear

Based on the above description the value of consumer protection against the contract terms information in e-commerce based on the value of justice Pancasila is to realize the contractual terms information in e-commerce complete content substansi contract terms and protect the balance between consumers and business actors.

## 6. Conclusion

Information on contract terms in electronic trading still puts the consumer in a weak position despite the existing ITE Act, so justice is still problematic for consumers. The provisions of the ITE Law and the Consumer Protection Act are very simplistic (simple) to say that there is an electronic trade guarantee, especially for consumers.

The value of the protection of consumer law against the contract terms information in ecommerce based on Pancasila justice value, is to protect equally between consumer and business actor, giving information of contract terms complete with contents of contract substance. Legal norms in the formulation of Article 9 and Article 10 paragraph (1) of Law Number 11 Year 2008 regarding Information and Electronic Transactions, which formulate the right of consumers in transactions and the existence of certification bodies reliability of business actors that are specifically regulated by ministerial regulations.

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<sup>23</sup> Interview with Caesar Azeem on 15 May 2016.

<sup>24</sup> McGregor, S.L.T. Consumerism, the common good and the human condition [Feature Article]. *Journal of Family and Consumer Sciences*, 99(3) ,2007,p : 15

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