

## Protection of Parties in the Consumer to Consumer Business Model Using Social Commerce in Indonesia

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### Abstract

This study aims to examine the extent of protection of parties in the consumer to consumer business model using social commerce in Indonesia. This study uses normative study methods accompanied by statute approach and comparative approach. Based on the study the authors showed that the application of the C2C business model using social commerce has a very large risk of bad faith actions. This is based on two main factors. First, there is still a lack of pre-emptive action taken by the platform provider (in this case Instagram) in verifying the identity and data of information related to businesses. Thus indicates that the platform is merely a provider of communication containers without any protection to consumers. Second, there is still a lack of small and medium-sized businesses that understand the importance of e-contracts in establishing alliance relationships with consumers. There are some suggestions recommended by the author, such as the identity of business actors, domicile, and track record of business actors that must be clearly listed through the certification of business actors increasing the knowledge of businesses related to the use of payment media that is friendly and accessible to consumers.

**Keywords :** C2C, Social commerce, e-commerce

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### A. Introduction

Soaring internet growth has driven changes in business models and fueled the development of e-commerce. The growth of the internet to the business world has a positive impact, among others, by shrinking the distance between producers and consumers, reducing costs and barriers for Small and Medium Enterprises (SMEs) to compete and take advantage of greater market share. Based on data from the U.S. International Trade Commission (USITC), e-commerce grew from USD 19.3 trillion in 2012 to USD 27.7 trillion in 2016. The United Nations Conference on Trade and Development (UNCTAD, 2019) put the value of e-commerce at USD 29 trillion in 2017. A recent study conducted by CUTS international found that in June 2019 there were 84 regional trade agreements (RTAs) that included e-commerce provisions, either as separate chapters or as special articles. Sixty percent of those RTAs went into effect between 2014 and 2016. This indicates increased interest in regulating cross-border trade in recent years. <sup>1</sup>

Based on data from GlobalWebIndex, Indonesia is the country with the highest e-commerce adoption rate in the world in 2019. As many as 90 percent of internet users aged 16 to 64 years in Indonesia have conducted online product and or service purchase transactions. Aside from the consumer lifestyle, the e-commerce industry also opens new business opportunities, as well as producing trickle-effect for supporting sector industries, such as logistics, IT infrastructure, and e-commerce operators. <sup>2</sup>

The development of trade through e-commerce systems is increasingly relevant to the increasing number of business models in the implementation of e-commerce. The e-commerce business models are B2B (Business to business e-commerce), B2C (Business to consumer e-commerce), C2C (consumer to consumer), C2B (Consumer to business e-commerce), and government/public administration e-commerce.<sup>3</sup> The entire business model aims to make it easier for consumers to get the goods they want and open opportunities for each individual to start a trading business. The convenience offered through the use of the internet for individuals who want to trade makes more and more individuals try their allocation in the world of e-commerce.

Some consumers who initially bought a product or goods that are intended to be used alone turned into businesses. There are several opportunities given by the manufacturer to the individual, one of which is to become a Supplier, dropshipper, Wholesalers, Resellers, or Retailers. The overall role mostly uses the consumer-to-consumer (C2C) business model. C2C arises as a result of advances in website technology so that users can interact with each other and the content is provided (generated) by the user itself. This form of active interaction

<sup>1</sup> Ismail, Y. (2020). *E-commerce in the World Trade Organization*, International Institute for Sustainable Development and CUTS International, Geneva: the International Institute for Sustainable Development. p. 1-2

<sup>2</sup> <https://www.cnnindonesia.com/teknologi/20200205204206-206-472064/tren-dan-peluang-industri-e-commerce-di-indonesia-2020>

<sup>3</sup> <https://www.ecommerceceo.com/types-of-ecommerce-business-models/>

affects the form of e-commerce that occurs. On e-commerce C2C there is an e-commerce website where users can sell products and services on the website, while also being able to search for the products and services they want and make transactions.<sup>1</sup>

Asia Social Commerce Report based on PayPal study with Blackbox Research shows Instagram and Facebook to be the most widely used social media by merchants in Indonesia to promote their business. The rapid growth of the number of smartphone users and the soaring use of the internet are two factors that support the development of social media-based commerce or social commerce. The study estimates that the number of social media users in Asia in 2018 will exceed 1 billion users, growing almost twice as much as in 2012. Smartphone ownership reaches 88% of the population while internet access is already enjoyed by 92% of the population.<sup>2</sup>

Jimly Asshiddiqie explained that law enforcement was interpreted as an effort made to make the law, both in a narrow formal sense and in a broad material sense, as a code of conduct in all legal acts, both by the legal subjects involved and by an official apparatus of authority endowed with duty and authority by law to guarantee the functioning of the legal norms that apply to the life of society and the State.<sup>3</sup> Based on Government Regulation No. 82 of 2012 concerning The Implementation of Electronic Systems and Transactions in the public and private sphere, shows that the consumer-to-consumer (C2C) business model belongs to the category of transactions in the private sphere. Businesses that implement the C2C business model in Indonesia are businesses that fall into the category of Small and Medium Enterprises. The characteristics of C2C are to apply low costs and ease of access to the platform for its users (businesses and consumers). The platforms used by C2C businesses in Indonesia mostly use social media as an intermediary between businesses and consumers. Based on research conducted by Instagram and business consulting firm IPSOS, it shows that 52 percent of Indonesian SMEs choose to use Instagram to promote products and direct customers to their websites. The survey also showed that 81 percent of its users, especially in Indonesia, use Instagram to get information about a product or brand. Indonesia is also one of the five countries with the largest Instagram users in the world.<sup>4</sup> The development of the Consumer to Consumer (C2C) business model by using social media as a meeting place between businesses and consumers raises a variety of problems.

Based on research from the World Economic Forum shows that the problems obtained by consumers e-commerce users are caused by several factors, such as: the unclear identity and location of businesses, the unclearness of information or advertisements submitted, a lot of electronic commercial information submitted to consumers without the consent of consumers (spam), the lack of protection of online payment security, the lack of protection of consumer personal information and data.<sup>5</sup>

Meanwhile e-commerce transactions that occur across national borders, in apart from the problems mentioned earlier, also find the problem such as the unclear language used in communicating between the parties, the unclear choice of law agreed upon the parties. In addition to the problems outlined by the World Economic Forum, the authors also argue that problems arising in C2C transactions through social commerce in Indonesia can be caused by weak legal power over the alliance relationship between businesses and consumers. Social commerce, in this case, the use of Instagram in Indonesia, is dominated by small businesses. So that businesses rely only on Instagram as a medium of communicating with consumers (through the comments field and or private messages) that can be continued through contact person (phone or via WhatsApp or other free communication media) to show agreement. The absence of a binding contract between the parties causes the legal relationship between the two will have difficulty in proving in case of problems.

Based on the introduction that has been presented, formulated the problem as follows How is the protection of parties in the consumer to consumer business model using social commerce in Indonesia.

## B. Research Methods

The method in this legal research applies the legal approach by studying international regulations and conventions on social commerce. Solving legal issues in this study, conducted through two stages. The first stage of conducting searches, collection of legal materials, both primary legal materials and secondary legal materials. The second stage analyzes the legal materials that have been collected in the first phase. The collection of legal materials, conducted by tracing legal materials in accordance with legal issues, is then classified in accordance with the formulation of the problem, and the purpose of the planned research. Analysis, study, or interpretation is done based on legal materials collected to solve existing legal issues. From the results of the analysis and study

<sup>1</sup> <https://www.clarity-ventures.com/articles/what-is-consumer-to-consumer-ecommerce>

<sup>2</sup> <https://katadata.co.id/hariwidowati/digital/5e9a55d419328/pedagang-indonesia-paling-banyak-manfaatkan-instagram-dan-facebook>

<sup>3</sup> Zulfadli, M., Miru, A., Borahima, A., & Sitorus, W. (2019). Leniency Program to Prove the Cartel in the Enforcement of Business Competition Law. *JL Pol'y & Globalization*, 87, p. 126.

<sup>4</sup> <https://www.domainesia.com/tips/5-fitur-instagram-terbaru-untuk-bisnis/>

<sup>5</sup> Lianos, I., Mantzari, D., Durán, G. M., Darr, A., & Raslan, A. (2019). The Global Governance of Online Consumer Protection and E-commerce: Building Trust. *World Economic Forum*, p.9-10

and interpretation of legal materials, will be drawn conclusions in the form of arguments to answer the legal issues raised. As a final step, give a prescription based on the new arguments that have been built in conclusion, in the form of suggestions or recommendations.

### C. Result and Discussion

#### a) Scope of Consumer to Consumer (C2C) Social Commerce Users

First recognized in the context of The World Trade Organization (WTO) at The Second Ministerial Conference in May 1998 in Geneva, the conference adopted a declaration on Global Electronic Commerce calling for the establishment of a comprehensive work program on e-commerce issues. The WTO work program related to e-commerce is established by the General Council (GC) in September 1998. The program defines e-commerce, e-commerce, as the production, distribution, marketing, sale, or delivery of goods and services by electronic means. The explosive growth in e-commerce activities is very significant. In October 1998, the Organisation for Economic Co-operation and Development (OECD) endorsed an action plan related to e-commerce. The OECD defines that e-commerce transactions are:

*E-commerce transaction is the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders.*

Based on the definition, goods or services ordered by e-commerce method, the process of payment and delivery of goods or services does not have to be done online. E-commerce transactions can be conducted by companies, households, individuals, governments, and public or private organizations. The definition is narrower than that used in WTO e-commerce work programs, as it excludes sales or purchases made physically or not using digital networking means (webpages, extranets, Electronic Data Interchange-EDI). For example, orders via manually typed phone calls and emails are not included.<sup>1</sup>

The terms e-commerce and digital trade are often used interchangeably. A growing general understanding states that digital trade includes digital transactions in the trade of goods and services that can be delivered digitally or physically. The transaction involves consumers, companies, and governments. In 2019, the OECD referred to a policy approach entitled Trade in the Digital Era and added that digital commerce involves business-to-business transactions including global value chains (GVCs), as well as transactions between consumers or businesses through online platforms. Of course, all transactions must be supported by data that is the lifeblood of digital trading. Australia defines e-commerce and digital trade as the trade of goods and services using the internet including the transmission of information and data across borders. The United States, meanwhile, is more inclined to use the term digital trade. The term Digital trade means the delivery of products and services over the Internet by firms in any industry sector, and of associated products such as smartphones and Internet connected sensors. Excludes the sale of physical goods ordered online, as well as physical goods that have copies (such as books, movies, music, and software sold on CDs or DVDs).<sup>2</sup>

According to Julian Ding, E-commerce is a commercial transaction between sellers and buyers or parties contractually in the field, the provision of goods, services, or transfer of rights through electronic media (digital), non-physical, in public network systems but private (confidential, closed). The public network system is an open system (internet or world wide web/www). Transactions made through the needs of country/nation/local boundaries.<sup>3</sup>

Indonesia defines e-commerce as trading terms through electronic systems. Article 1 point (1) of Law No. 7 of 2014 on Trade, Trade is an order of activities related to the transaction of goods and/or services in the country and exceeds the borders of the country intending to transfer the right to goods and/or services to obtain rewards or compensation. Article 1 point (24), Trading through electronic systems is a trade whose transactions are carried out through a series of electronic devices and procedures. While based on Article 1 number 2 of Law No. 11 of 2008 concerning Information and Electronic Transactions as amended by Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions, Electronic Transactions are any legal action performed using computers, computer networks, and/or other electronic media. Based on the definition of both rules it appears that the scope of electronic transaction is wider than the definition of trade through electronic systems. Electronic transactions include all legal acts while trading with electronic systems only includes transactions of goods and/or services.

As for the definition of the term, social commerce is not contained in the laws and regulations in Indonesia. The term social commerce began to be used after the era of social media technology and web 2.0 began to develop. The development of such technology resulted in an innovation in e-commerce transactions. E-commerce business model that prioritizes product-oriented environment is transformed into social and customer oriented. It considers consumer demand related to the improvement of online application-based services that

<sup>1</sup> Ismail, Y. *Op. Cit.*

<sup>2</sup> *Ibid.*

<sup>3</sup> Dhanang Widijawan. (2017). *E-logistic contract (tanggung jawab pelaku usaha terhadap malfunction, keamanan siber, dan data pribadi)*, Bandung: Keni Media. p.15

facilitate interaction between businesses and consumers. Social Commerce can be defined as a web 2.0-based online application that supports collaborative interaction and communication, thus helping consumers in the decision-making process to purchase goods and services online.<sup>1</sup> While Maya E. Dollarhide in her writing defines social commerce as follows:<sup>2</sup>

*“Social commerce is the use of networking websites such as Facebook, Instagram, and Twitter as vehicles to promote and sell products and services. The success of a social commerce campaign is measured by the degree to which consumers interact with the company's marketing through retweets, likes, and shares.”*

Although the term social commerce is not contained in the laws and regulations in Indonesia. However, according to the authors definition of trading through electronic systems indirectly also includes social commerce. It is also supported by the scope of electronic transactions. The scope of electronic transactions in Article 40 of Government Regulation No. 82 of 2012 concerning the Implementation of Electronic Systems and Transactions stipulates that the Implementation of Electronic Transactions can be conducted in the public or private sphere. The implementation of Electronic Transactions in the private sphere includes Electronic Transactions:

- a. between Business Actors;
- b. between business actors and consumers;
- c. interpersonal;
- d. between Agencies; Dan
- e. between agencies and business actors following the provisions of the laws and regulations.

Trading with electronic systems involves several parties in trade transactions. Parties involved in e-commerce transactions are

- a. Business organization (business person)
- b. Manufacturers (factory entrepreneurs/manufacturers)
- c. Distributors, persons or entities in charge of distributing goods (merchandise)
- d. Supplier
- e. Dropshipper
- f. Wholesalers (wholesaler)
- g. Resellers
- h. Retailer (retailer)
- i. Organizations (schools, businesses, nonprofits) that are not government-owned
- j. Website provider as a platform used in trade transactions (third parties).

#### **b) Legal Protection of User Parties Consumer To Consumer Business Model**

Protection of the parties to C2C transactions can be divided into three parts of legal protection in Indonesia. The legal protection considers three aspects, such as consumer and business protection in the aspect of trade, protection in the aspect of cyberspace (information and electronic transactions), and protection in terms of the civil alliance between the parties.

The 1945 Constitution mandates that national development aims to realize a fair and prosperous society. National development goals can be realized through a democratic economic development system to grow and develop a world that produces goods and services that are worthy of consumption by the community. Based on the mandate of the 1945 Constitution underpinning the birth of Law No. 8 of 1999 on Consumer Protection (Consumer Protection Law). Consumer Protection Law guarantees legal certainty and disclosure of information and access to information for consumers. The legal certainty aims to balance the position of both parties. Businesses are obliged to raise the awareness regarding the importance of honest and responsible attitudes in trying. Efforts to be honest and responsible are evidenced by improving the quality of goods and or services that ensure the continuity of the business of production of goods and or services, health, comfort, safety, and safety of consumers. Not only in terms of business actors, UUPK aims also to increase the awareness, ability, and independence of consumers for protection of themselves.

The Consumer Protection Law regulates the protection of consumers by balancing the position of businesses and consumers. The rights and obligations of both parties are stipulated in the law. Article 54 Consumer Protection Law provides maximum legal certainty for consumers. This is evidenced by providing legal certainty for consumers, starting with ensuring the good faith of businesses since the consumer has intended to carry out transactions. Good faith business actors in the form of providing information to the maximum service by putting forward honest transactions. Meanwhile, in the process of buying and selling found acts that result in default or alleged bad faith, consumers are given legal protection to have legal efforts in resolving disputes appropriately. If in such legal efforts it has been proven that there is a default or bad faith, the

<sup>1</sup> <https://dosen.perbanas.id/social-commerce/?print=print>

<sup>2</sup> <https://www.investopedia.com/terms/s/social-commerce.asp>

businessman is obliged to provide compensation, compensation, and or reimbursement. Overall legal certainty over consumer rights can be maximally owned by consumers starting with the provision of coaching and education of consumers.

The Consumer Protection Law aims to lift the dignity of consumer life. Efforts to avoid losses due to the use or use of goods and/or services. There are 10 kinds of consumer rights, namely the right to safety and security, the right to vote, the right to obtain information, the right to be heard, the right to obtain appropriate legal settlement efforts, the right to obtain consumer education, the right to be treated correctly and honestly and non-discriminatoryly, the right to recover damages, the right to obtain goods or services in accordance with the exchange rate provided, and the right to obtain appropriate legal settlement efforts.<sup>1</sup>

Business actors in the C2C business model who were originally consumers (consumer 1) users of the website platform changed their position to become business actors after the individual carried out business activities in various economic fields on the website platform. Businesses in the C2C business model are not categorized as intermediary consumers so that all rights and obligations of businesses are attached to the users of the C2C business model.

Aims to provide security and legal certainty for users of information technology, media, and communication. Law No. 19 of 2016 on Amendments to Law No. 11 of 2008 on Information and Electronic Transaction (ITE Law) is an effort by the government in providing cyber space protection. Protection against the use of information technology and electronic literacy is implemented based on the principle of legal certainty, benefits, prudence, good faith, and freedom of choice of technology (technology neutral). Protection regulated by the ITE Law consists of preventive and repressive measures.

The parties conducting electronic transactions shall be in good faith in the interaction and or exchange of electronic information and or electronic documents during the transaction. The ITE Law stipulates that information and electronic documents are legal evidence with provisions that can be accessed, displayed, guaranteed integrity, and can be accounted for explaining a situation. Acts committed by businesses in bad faith that result in harm to others can be punished in the form of imprisonment and or fines as a repressive act.

Preventive measures are to enforce reliability certificates and electronic certificates. Based on Article 10 paragraph 1 of the ITE Law, it stipulates that businesses of electronic transaction users can be given a certificate of reliability. A certificate of reliability is a document that states that a business conducting electronic transaction has passed an audit or conformity test from a reliability certification body. The object of the certificate of reliability is the ability of businesses in conducting electronic transactions. Based on Article 68 Government regulations No. 82 of 2012 concerning The Implementation of Electronic Systems and Transactions, reliability certificates are divided into five categories of reliability certificates, such as identity security, security against data exchange, safeguards against insecurity, consumer rating, and safeguards against the confidentiality of personal data. Identity seal is a certificate that guarantees reliability to ensure that the identity of the business person is correct. Validation conducted by the Certification Body reliability only against the identity of businesses that contain at least the name of the legal subject, the status of the legal subject, address or position, telephone number, email address, business license, and Taxpayer Identification Number (NPWP). Security seal is a certificate that guarantees the certainty of the process of delivery or exchange of data through the website of businesses that are protected by security by using security technology data exchange process. Security against vulnerability seal is a certificate that guarantees the certainty of information security management system applied by businesses with reference to certain electronic system security standards.

Consumer rating seal is a certificate that provides reliability assurance by providing a certain rating based on the subjective assessment of consumer satisfaction to electronic transaction services held by businesses. The certificate provides assurance that businesses have obtained assurance that businesses have gained recognition of customer satisfaction based on real experience from consumers including the pre-transaction process, transactions, and post-transaction. Privacy seal is a certificate that guarantees its confidentiality in the form of certainty that consumer personal data is protected as appropriate.

An electronic certificate is an electronic certificate, containing an electronic signature and an identity indicating the status of the parties' legal objects in electronic transactions issued by the electronic certification operator. Electronic certificate is a guarantee of security of electronic system implementation. Electronic certificates have an internal structure in which some parts are allowed to be informed or attached to the certificate. It considers the legal force of the certificate. Electronic certificate serves as a means of authentication and verification of the identity of the electronic certificate and the integrity and authenticity of electronic information. The certificate can be owned by businesses in the form of individuals or business entities. Based on Regulation of the Minister of Communication and Informatics No. 11 of 2018 concerning the Implementation of Electronic Certification, applications for ownership of electronic certificates are classified into two levels of identity verification such as level 3 and level 4.

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<sup>1</sup> Ahmadi, M., & Yodo, S. (2008). *Hukum Perlindungan Konsumen*, Jakarta: Rajawali Pers, p.40-46

Level 3 is in the form of face-to-face identity verification, using the applicant's identity card compared to the database of the Ministry of Home Affairs (Directorate General of Population and Civil Records). Level 4 is in the form of identity verification using electronic means by utilizing population administration data that meets two authentication factors such as what you have and what you are. What you have is an identity document owned by the prospective owner of an electronic certificate such as an electronic resident id card. What you are is biometric data among others in the form of fingerprints belonging to prospective owners of electronic certificates. In addition to the availability of reliability certificates and electronic certificates, the ITE Law also suggests electronic transactions conducted by businesses (e-commerce) should be poured into electronic contracts that bind both parties. So that the position of the parties and the rights and obligations can be clearly stated in the clauses of the agreement.

According to the author, alliances arising in trading with electronic systems can occur with several concepts of legal relationships caused by several things, such as

1. Agreement in writing in the form of a contract (e-contract) legally signed through a digital signature (e-signature). E-contracts in the implementation of contractual relationships can be carried out electronically or not electronically.
2. Agreement in the form of an agreement in an electronic system in the form of :
  - a. Online agreements that are closed by clicking (clickwrap agreement)
  - b. Online agreements that are closed by browse -wrap agreement
  - c. Agreement closed by electronic mail exchange (email)
3. Agreement arising from the creation of offer actions, expressions of will, acceptance, consideration, and or bargained for exchange through electronic media in the form of social media.
4. Agreements arising not through electronic systems but the implementation of contractual relationships are resolved electronically.

The protection of the parties to the C2C business model by applying the concept of legal relations through a written agreement will provide maximum legal force. The Civil Code (BW) in force in Indonesia related to the implementation of the agreement is stipulated in several articles. Articles 1315, 1318, and 1340. The article governs and affirms that the agreement applies to the parties who make the agreement, to the heirs and those who obtain rights, and applies to third parties. Article 1320 BW requires that an agreement requires four conditions, such as agreement, proficiency, a certain thing, and a lawful cause. Agreements using the internet network are implemented in different spaces and places between the parties. The principle of freedom of contract over clauses outlined in electronic agreements gives the parties the widest freedom to agree on clauses so that they become binding laws for both. The characteristics of electronic agreements that are faceless cause difficulty in determining whether the legal terms of agreement are stipulated in BW or not. The agreement on electronic agreements certainly considers the concept of legal relations that gave birth to an alliance. The concept of legal relationship determines the validity or absence of agreement between the two parties and determines the time of occurrence of the agreement.

No meeting the parties to an electronic agreement provides any party with the opportunity to enforce the agreement. Both individuals are different citizens even in terms of negativity there is an agreement agreed by not paying attention to the proficiency of the parties. Agreements made by parties by heeding the element of proficiency certainly have legal risks. Under Article 1329 and Article 1330 BW the subject of the law is declared incapable of making agreements i.e., immature persons and those under the authority. As for the person under the guardianship stipulated in Article 443 BW, such as people who are in a state of ignorance, brain disease, dark eyes, or crazy people. Considering the incompetence of the agreement made by heeding the element of proficiency then his actions can be canceled (vernietigbaar).

Article 47 paragraph 2 of Government regulations, Implementation of Electronic Systems and Transactions (PP PSTE) states that electronic contracts are considered valid if there is an agreement of the parties held by a capable legal subject or authorized to represent. The PP insists that electronic agreements should be implemented by capable people. Therefore, PP PSTE stipulates that electronic contracts contain at least the identity data of the parties, objects and specifications, electronic transaction requirements, prices and costs, procedures in the event of cancellation by the parties, legal rights to the aggrieved parties to be able to return goods and/or request replacement of products if there are hidden defects, and legal options for settlement of electronic transactions. Furthermore, article 49 PP PSTE states that businesses that offer products through electronic systems are obliged to provide complete and correct information relating to the terms of contracts, manufacturers, and products offered. Contract offers or advertisements give consumers a time limit on returning goods delivered in the event of a non-compliance with the agreement or a hidden defect.

#### **c) Legal Protection Efforts of C2C Parties in the Scope of Social Commerce**

Businesses are obliged to implement acts of good faith in each of their business activities. Good faith in the form of true, clear, and honest information about the conditions and warranties of goods and / or services and explain the use, repair, and maintenance. Good faith deeds can be realized by businesses by including a detailed

explanation of the product into the caption feature (brief explanation) that has been provided by instagram. Business actors are obliged to guarantee the quality of goods and/or services produced and or traded based on the provisions of the applicable quality standards of goods and/or services. Therefore, the use of photos of products listed in feeds (gallery) should use photos of original products owned by businesses. However, businesses in the C2C business model are third parties, where the products sold are largely not in their hands. The business person uses photos of products that have been provided by the manufacturer or the first part of the real owner of the goods.

Under the Consumer Protection Law, Consumers are allowed to test, and/or try certain goods and/or services and provide guarantees and/or guarantees on goods made and/or traded. The provision of social media that is original as a medium of friendship developed into a medium of meeting in trade transactions. Businesses can innovate by combining other applications to improve services. One of the ways used is by a applying cod delivery model (cash on delivery). Cash on Delivery or COD is one of the payment methods in the online business where the buyer makes a payment to the seller at the time of delivery. In other words, COD can be defined as an agreement between the buyer and the seller to make payment when the purchased goods have arrived at the destination address. So that in this COD method consumers can check in advance the goods that have been purchased.

Businesses that apply bad faith in their business activities will be given two sanctions, such as administrative sanctions and or criminal sanctions. Administrative sanctions in the form of compensation, while criminal sanctions, such as the seizure of goods, announcement of judge's decision, payment of compensation, orders to stop certain activities that cause consumer losses, obligations to withdraw goods from circulation, or revocation of business license. Under these terms, instagram has developed a block (hold or dismiss) feature and a report feature provided that there is an act of spam, fraud, or infringing content.

Based on Book 3 BW, the Alliance is a legal relationship in the field of property between two or more persons where one party is entitled to something and the other party is obliged to something. Consumer to consumer business model by using social commerce as a medium of communication and transactions gave birth to at least three alliance relationships. The first relationship is the manufacturer or owner of the goods with consumer<sup>22</sup>. The second relationship is consumer 1 and 2 with social media platform providers. Third relationship between consumer 1 and consumer 2.

The alliance is divided into two parts, such as the alliance that is born because of a treaty and the alliance that is born due to the law. Based on the division of the alliance, the protection of the parties can be measured in relation to the binding legal force of the alliance. Alliances born because of an agreement will be subject to the prevailing agreements and laws and regulations. According to the authors, alliances born by covenant have stronger binding legal powers. For in addition to the prevailing rules, the parties shall be subject to the agreement that has been promised. The rights and obligations and achievements that must be implemented by both parties have been poured into the form of an agreement. The agreement set forth in the agreement will make it easier for the parties to anticipate bad faith behavior until in the future there is a dispute. Alliances with a covenant can be reviewed from pre-covenants, covenants, and treaty executions taking into account the principles in the law of the covenant. Agreements that put forward the principle of good faith and the principle of balance of the parties will increase trust between the two parties.

The form of agreement in e-commerce transactions is known as electronic contract (e-contract). The definition of e-contract according to Benita Ezeigbo is:<sup>1</sup>

*“E-contract is any kind of contract formed in the course of e-commerce by the interaction of two or more individuals using electronic means, such as e-mail, the interaction of an individual with an electronic agent, such as a computer program, or the interaction of at least two electronic agents that are programmed to recognize the existence of a contract.”*

Based on the definition indicates that e-contract is an agreement made based on electronic commerce by the parties using electronic means. An e-contract is a contract that is created, determined, executed, and used by a software system. There are two main parties in the e-contract, the Originator and the Addressee. There are three main methods in e-contracts such as e-mail, world wide web (www), and cyber contracts (click to agree/online contract).<sup>2</sup>

While in the C2C business model using social commerce, the alliance begins with an advertisement<sup>27</sup> uploaded by businesses (consumer 1) into feeds (gallery), the ad is an offer. No provision requires businesses to pour detailed descriptions related to goods to be sold into captions (brief explanations) on uploaded ads. However, if businesses include captions on instagram feeds, then the caption is considered by the author as a whole offer. The process of offering and receiving (acceptance) will take place through the comments field, direct message (private message), and or through the contact person (business number of the business person).

<sup>1</sup> Ezeigbo, B. (2018). *E-contracts. Essentials, variety and legal issues*. GRIN Verlag. p.1-5

<sup>2</sup> *Ibid*.

Not many businesses in small and medium-sized businesses, Instagram users, who have a website as a medium of communication continued on the transaction of electronic commerce. So, according to the author, the alliance on social commerce (especially on the Instagram) is only tied to a regular alliance. The absence of e-contracts underpinning legal relationships in social commerce increases the risk of increasingly difficult dispute resolution processes. Social media that is originally intended as just a medium to establish communication with relatives and build friendships will experience obstacles when social media is used as a medium of trade transactions. According to the author, businesses can increase trust and business integrity to consumers by collaborating on other social media in the form of websites or blogspot. The website can be used as a medium of communication that pours true, clear, and honest information about the condition and warranty of goods and /or services and explains the use, repair and maintenance. Besides, businesses can list e-contracts on the website.

Prevention of bad faith conducted by businesses can be anticipated with the availability of business profiles in Instagram. Business profiles intended to convey information related to identity, location, contact person (contact button),<sup>28</sup> as well as business category information by businesses can be found on the Instagram feature. However, according to the author there is no feature that verifies the accuracy of the profile data opens opportunities for businesses to behave in bad faith. Instagram has provided a verification system for Instagram accounts owned by artists/actors, athletes, well-known product brands, public figures, or influencers indicated by the surge of followers and likers on their posts. However, SME users who use Instagram as an intermediary media with consumers will certainly have difficulty getting a verified account.

Law No. 19 of 2016 on Amendments to Law No. 11 of 2008 on Information and Electronic Transactions has ensured the security of transactions through electronic systems. Any business that interacts with a verified electronic system can be demonstrated by ownership of an electronic certificate. An electronic certificate is an electronic certificate containing an electronic signature and an identity indicating the legal subject status of the parties in an electronic transaction issued by the electronic certification operator. However, the rule has not been able to require the overall business actors, especially SME businesses who use social commerce. Therefore, according to the author of the government can work with Instagram and other social media platforms to develop certification of businesses (SMEs) that use social commerce. Certification that is devoted to SME businesses should consist of identity data, domicile of business actors, and the track record of businesses in carrying out trade transactions using social commerce. The track record will build accountability from businesses to increase consumer confidence in businesses. Considering the accuracy of the track record, the platform can add one feature that is complaint by requiring complaints accompanied by accurate evidence.

Infrastructure in Indonesia, has been established a body that oversees data traffic in e-commerce transactions namely Id-SIRTII / CC or Indonesia Security Incident Response Team on Internet and Infrastructure / Coordination Center (Id-SIRTII) in charge of monitoring the security of telecommunication networks based on internet protocol. The idea to establish Id-SIRTII/CC has been conveyed by some circles, especially practitioners, industry, academics, information technology community and government since 2005. Id-SIRTII/CC has the main task of socializing with related parties about IT security, conducting early monitoring, early detection, early warning of threats to telecommunication networks from within and outside the country, especially in the security measures of network utilization, creating /running /developing and database log files and internet security statistics in Indonesia.<sup>1</sup>

Id-SIRTII/CC provides assistance for improving security and security systems in critical infrastructure agencies in Indonesia and becomes a coordination center (CC) for every initiative at home and abroad as well as a single point of contact. Id-SIRTII/CC also conducts research and development in the field of information technology/information system security. Currently, laboratory facilities that have been owned include training centers, laboratories, security simulations, digital security, digital forensic, malware analysis, data mining, and organizing content filtering projects, anti-spam and so on.<sup>2</sup>

#### **D. Conclusion**

The protection of the parties in the business model of consumer-to-consumer social commerce users is divided into three types of protections stipulated in the prevailing laws and regulations in Indonesia. The legal basis for such protection is the Consumer Protection Law, the Civil Code related to the alliance relationship, and the Information and Electronic Transactions Law. However, based on the study the authors showed that the application of the C2C business model using social commerce has a very large risk of bad faith actions. This is based on two main factors. First, there is still a lack of pre-emptive action taken by the platform provider (in this case Instagram) in verifying the identity and data of information related to businesses. Thus indicates that the platform is merely a provider of communication containers without any protection to consumers. Second, there is still a lack of small and medium-sized businesses that understand the importance of e-contracts in establishing

<sup>1</sup> Maskun, & Meilarati, W. (2016). *Aspek Hukum Penipuan Internet*, Makassar: Keni Media. p. 93-94

<sup>2</sup> *Ibid.*



alliance relationships with consumers. There are some suggestions recommended by the author, such as the identity of business actors, domicile, and track record of business actors that must be clearly listed through the certification of business actors.; increasing the knowledge of businesses related to the use of payment media that is friendly and accessible to consumers.

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