

Legal Certainty in the Use of Certification of Trustworthiness by Indonesian E-Commerce Business

Muhamad Amirulloh, Vidya Noor Rachmadini

Abstract

The development of information and communication technology has changed various patterns of human life, one of which is electronic commerce (e-commerce) which has many advantages but is also quite vulnerable to the problems and losses it causes. One of the problems that often occurs in Indonesia is the fraud of electronic transactions by businesses electronically in Indonesia. Responding to this, the use of a Certificate of Trustworthiness on the sites of business people can be carried out electronically in Indonesia. The nature of the use of Certificate of Trustworthiness that only “regulates” as contained in Article 10 of the ITE Law is a separate issue regarding the implementation of the principle of legal certainty and the achievement of the objectives of the ITE Law. The approach method used is normative juridical, with the specifications of analytical descriptive research. Data are analyzed qualitatively juridical in order to obtain conclusions on the problems being studied.

The results of the study show that the principle of legal certainty has not been applied properly in Article 10 of the ITE Law related to the obligation to use Certificate of Trustworthiness by Indonesian e-commerce business. Efforts to achieve the objectives of the establishment of the ITE Law in Article 4 are hampered and may not even be achieved.



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Introduction

The rapid development of information and communication technology has influenced and changed various patterns of human life, one of which is by forming an information society through the internet.^{1,2,3,4}

Electronic trading (electronic commerce) transforms conventional economic transactions that must be face to face and use money as payment, into transactions that do not need face to face with non-cash payment facilities. Viewed in terms of efficiency and effectiveness of space and time, e-commerce is very helpful in trade and business activities between countries, but when viewed from another side e-commerce is quite vulnerable to problems and losses that will then arise.

One form of legal protection in e-commerce in the provisions of the ITE Law is to regulate the use of Certificate of Trustworthiness that guarantees legal protection for data privacy and information system security and electronic transactions. Certificate of Trustworthiness is a document stating that a business actor who conducts an electronic transaction has passed an audit or conformity test from a certificate of reliability. Business actors can obtain a Certificate of Trustworthiness by passing the assessment and audit stage from the authorized body to issue a Certificate of Trustworthiness.^{5,6,7}

Certificate of Trustworthiness includes examining complete and correct information from business actors to obtain a Certificate of Trustworthiness. Certificate of Trustworthiness in electronic transactions is needed by business actors to protect consumers in electronic transactions and ensure that business actors meet the criteria determined by the Certificate of Trustworthiness Institution. In connection with this, Article 10 paragraph (1) of the ITE Law states that "Every business actor those organizing Electronic Transactions can be certified by a Certificate of Trustworthiness Institution." These provisions also encourage the birth of an understanding of the security and reliability of business actors in e-commerce through the use of a Certificate of Trustworthiness. Likewise in Article 42 paragraph (1) of Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions stating that "Implementation of Electronic Transactions in the private sphere can use a Certificate of Trustworthiness and/or Electronic Certificate". It is unfortunate that the nature of

*Muhamad
Amirulloh*

*Vidya Noor
Rachmadin*

norms in these two provisions is only regulating, not compelling. This is what makes the factor of legal certainty itself questionable. Whereas consumer rights to comfort, security and safety in consuming goods and/or services are guaranteed in Article 4 letter of Law No. 8 of 1999 concerning Consumer Protection.

Some cases of crimes that occur in internet transactions, namely fraud through the guise of selling goods. This case befell Chumpon Corps Phaibun, a Thai citizen. Chumpon was deceived by an Indonesian site, namely www.henbing.com managed by Ronal Lubis and Bayu. Through that site, Chumpon transacted buying a jet ski for 19,520 US dollars. However, after sending money to two accounts at Bank Mandiri, the jetski orders did not come.⁸ Another case happened to a comedian named Arafah Rianti who was tricked into buying a used car offered through an online trading site.⁹ These cases can occur, among others, due to the absence of site security standards that are met because there is no use of the Certificate of Trustworthiness. Based on the background of the problems to be studied, namely:

1. How is the implementation of the principle of legal certainty in the use of Certificate of Trustworthiness by Indonesian e-commerce business based on the ITE Law in the context of consumer protection?
2. How can the nature of the norms regarding the use of Certificate of Trustworthiness by Indonesian e-commerce business affect the achievement of the objectives of establishing an Information and Electronic Transaction Law?

Research Methods

This study uses a normative juridical approach by reviewing the provisions of the ITE Law regarding the Certificate of Trustworthiness. The research specifications used are descriptive analytical, by describing the reliability certificate settings that will be analyzed with the principle of legal certainty. The aim is to obtain a comprehensive and systematic description of the application of the principle of legal certainty and the achievement of the objectives of the establishment of the ITE Law related to the norms of regulation of Certificate of Trustworthiness based on the ITE Law.

Stages of research by examining library materials or secondary data which include primary, secondary and tertiary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indo-

nesia, Law Number 11 of 2008 concerning Information and Electronic Transactions juncto Act Number 19 of 2016, Law Number 8 of 1999 concerning Consumer Protection, and Government Regulation Number 82 of 2012 concerning Electronic Transactions. Secondary legal materials include various literature/books related to research material, various results of seminars, workshops, symposiums and research, journals, articles relating to research problems, and interviews. Tertiary law materials, such as the Legal Dictionary, Large Dictionary Indonesian, English-Indonesian dictionary, encyclopedias, and print and electronic media

Data collection techniques conducted by the author in writing this thesis through document study/literature study on secondary data and interviews. Data analysis methods used in writing this thesis are qualitative juridical methods, namely by inventorying, compiling systematically, relating each other with the problems examined by the provisions of the legislation that does not conflict with other laws and regulations, pay attention to the hierarchy of legislation and guarantee legal certainty, meaning that the legislation under study is whether the legislation in force is implemented by the enforcers law.

Discussion

Implementation of the principle of legal certainty in the use of Certificate of Trustworthiness by Indonesian e-commerce Business based on the Information and Electronic Transaction Act in the framework of consumer protection

Technological advances cannot limit human movement to not do most of their activities electronically. The rapid development of information technology has given birth to new forms of transactions between consumers and business people which is often called e-commerce. E-commerce is a dynamic set of technologies, applications and business processes that connect companies, consumers and communities through electronic transactions and trade in goods, services, and information held electronically.¹⁰

One of the efforts of the provisions of preventive and institutional to deal with the problem of rampant fake sites that deceive and / or mislead consumers can also be seen from the provisions of Article 10 paragraph (1) of the ITE Law which states that: "Every business actor that carries out transactions electronics can be certified by a certificate of reliability." This institution will issue a Certificate of Trustworthi-

ness to business actors as proof that those who trade electronically are indeed the existence, have a safe and reliable electronic system, and are worthy of business.

In order to obtain a Certificate of Trustworthiness, the user must pass the assessment and audit stage of the authority authorized to issue a Certificate of Trustworthiness. Evidence has been made the Certificate of Trustworthiness is indicated by the existence of a certification logo in the form of "Trustmark" on the businessman's homepage. Institutions that issue Certificate of Trustworthiness are often also called Certification Authority (CA) or Trusted Third Party (TTP). This institution is a legal entity that will later function as a trusted third party that issues Digital Certification.

The presence of this institution is very necessary because it can make the electronic transaction climate relatively more secure and trusted by internet users in carrying out electronic information exchange. CA institutions have effective suggestions to meet the four security aspects of electronic transactions, among others: authenticity, integrity, indisputable, and privacy or confidentiality (information exchanged can only be read by those who have the right)

Certificate of Trustworthiness is a document stating that a business actor who conducts an electronic transaction has passed an audit or conformity test from a Certificate of Trustworthiness Institution. The purpose of using the Certificate of Trustworthiness is to protect consumers in electronic transactions. Guarantee that business actors have met the criteria determined by the Certificate of Trustworthiness Institution (LSK). Certificate of Trustworthiness is used on websites and/or other electronic systems. With the certificate of reliability, it will make consumers feel safer to conduct transactions with the business actor, consumers can also know that the business actor has provided complete and correct information about everything related to important business data.

It is mandatory that the use of Certificate of Trustworthiness by business actors electronically will also trigger the industry of the Certificate of Trustworthiness Institution (LSK) in Indonesia. Organizers of electronic systems and transactions are expected to be able to switch to using local LSK because they have more value compared to foreign LSK, one of which is operating domestically. Local LSKs are able to check locations up to the business fields of electronic system

and transaction providers. In addition, the regulation can later encourage foreign LSK to open companies in Indonesia to improve services to consumers.

Article 10 paragraph (1) of the ITE Law and Article 42 paragraph (1) PP PSTE mentioned above actually also encourages the security and reliability of business actors in e-commerce through a Certificate of Trustworthiness. However, unfortunately, the norms in these two provisions are only regulating rather than coercive so that they do not guarantee legal certainty. According to Kelsen, the law is a norm system. Norms are statements that emphasize “should” or “das sollen” aspects, by including some rules about what to do. These rules become a limitation for the community to burden or take action against individuals. The existence of these rules and the implementation of these rules create legal certainty.¹¹

Normative legal certainty is when a regulation is made prominently because it regulates clearly and logically. Obviously in terms of **not causing doubt (multi-interpretation)** and **logical**. Obviously in terms of it being a norm system with other norms so that it does not conflict or cause a conflict of norms. Legal certainty refers to the application of clear, permanent, consistent and consequent laws whose implementation cannot be influenced by subjective circumstances. Certainty and justice are not just moral demands but factually characterize law. A law that is uncertain and non-fair is not just a bad law.^{1 12}

Based on this, the provisions concerning Certificate of Trustworthiness and Certificate of Trustworthiness Institutions as contained in Article 10 paragraph (1) of the ITE Law and Article 42 paragraph (1) PP PSTE clearly have caused doubts or multiple interpretations of the obligation to use Certificate of Trustworthiness by business actors electronically in Indonesia. In other words, business people electronically in Indonesia are unclear and it is uncertain whether they have an obligation to use a Certificate of Trustworthiness or not. It is possible that the business actor does not use a Certificate of Trustworthiness considering that it is not required and there is no legal sanction. The element of clarity to avoid mistakes in the meaning is also stated by Gustav Radbruch as one of the conditions or meaning of a legal certainty.¹³

The provisions of Article 10 paragraph (1) of the ITE Law and Article 42 paragraph (1) PP PSTE also become illogical because something reg-

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Amirulloh*

*Vidya Noor
Rachmadin*

ulated is essentially not an option, even it is a necessity to build a safe and reliable electronic system as stipulated in Article 15 and Article 16 of the ITE Law itself. Thus, the provisions of Article 10 paragraph (1) of the ITE Law and Article 42 paragraph (1) PP PSTE become illogical even contrary to Article 15 and Article 16 of the ITE Law. Article 15 paragraph (1) of the ITE Law provides that, "Every Electronic System Operator must operate an Electronic System reliably and safely and be responsible for the proper operation of the Electronic System".

In Article 3 of the ITE Law it is stated that "The use of Information Technology and Electronic Transactions is carried out **based on the principle of legal certainty**, benefits, prudence, good faith, and freedom to choose technology or technology neutral". The explanation of this article states that "the principle of legal certainty" means the legal basis for the use of Information Technology and Electronic Transactions as well as everything that supports its implementation that obtains legal recognition inside and outside the court. In relation to the obligation to use Certificate of Trustworthiness by business actors electronically in Indonesia, the provisions of Article 10 paragraph (1) of the ITE Law and Article 42 paragraph (1) PP PSTE clearly do not support the use of Information Technology and Electronic Transaction because they do not require and encourage the use of Certificate of Trustworthiness as well as the existence of an Institution for the Certificate of Trustworthiness of domestic products by the nation's children.

Based on these matters, the provisions of Article 10 paragraph (1) of the ITE Law and Article 42 paragraph (1) PP PSTE clearly do not implement the principle of legal certainty regarding the use of Certificate of Trustworthiness and the existence of a Certificate of Trustworthiness institution as an electronic transaction security sub-system. Furthermore, it can even be said that Article 10 paragraph (1) of the ITE Law and Article 42 paragraph (1) PP PSTE is contrary to the principle of legal certainty as stipulated in Article 3 of the ITE Law. Seeing the importance of using the Certificate of Trustworthiness and the existence and role of the institution of the Certificate of Trustworthiness in establishing a safe and reliable electronic system for the development and growth of electronic transactions, it would be nice if all businesses in e-commerce are required to carry out Certificate of Trustworthiness so that consumers and business actors have legal certainty in transacting in cyberspace.

The number of criminal crimes in the cyber world or commonly called cybercrime, the precautionary principle is very important to be considered and implemented by the community in conducting daily electronic transactions. The precautionary principle in an electronic transaction (e-commerce) is a principle that requires parties to promise to always be careful in all actions taken later so as not to cause harm to other parties. In conducting e-commerce transactions, consumers must be careful because they include personal data such as identity numbers, debit/credit accounts, and their PIN, etc. In addition to consumers, business actors must also be careful in maintaining the confidentiality of their consumer data so that they are not accused of misusing customer data if data intercepts occur by irresponsible persons. These things have been fulfilled by the use of a Certificate of Trustworthiness system. The use of the reliability certificate system reaffirms the importance of the role of technology to regulate human life in society and enforce the law itself. This is in line with what Lawrence Lessig stated that, “Four different regulatory modalities interact with one another, both in order to support or weaken the rights or regulations of the four modalities (laws, social norms, markets, and architecture / software) themselves alone, but the law has a special role in influencing all three.

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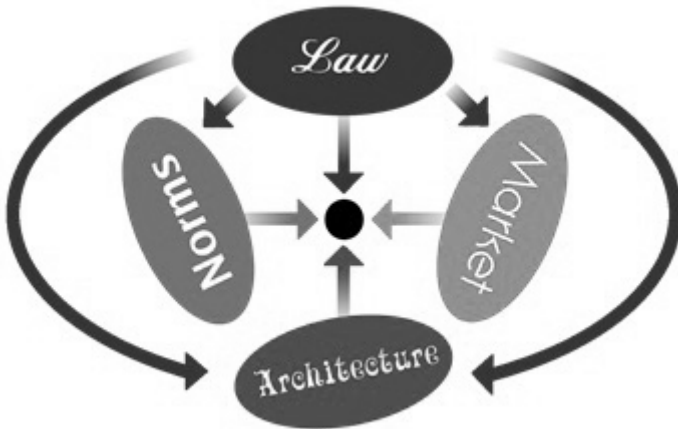


Figure 1 – Source: <https://goo.gl/images/dc7wTz> accessed on June 5, 2018

Achievement of the Objectives of the Establishment of the ITE Law Regarding the Nature of Norms About the Use of Certificate of Trustworthiness by Indonesian e-commerce Business

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The rapid development of information technology is driving increased mobility of information dissemination throughout the world. Growth and dissemination of information can be facilitated by internet digital communication technology. The rapid communication and information dissemination method developed a digital information network whose capacity continued to increase so that the internet also gave birth to a new era known as the era of the information economy and information society.

An e-commerce business or online business is a trust-based business of one party against another. A company that sells products that go online must be clearly identified so that consumers are not fooled by the products produced. When consumer experiences confusion over a product purchased online, he must know how to complain, how to redeem the product purchased and ask for the money sent back to the businessman if he decides not to buy the product he wants. Therefore trust in online business becomes the main factor of buyers to choose or take a product that they want.

A trust is very important in online transactions because new customers will buy if they already believe in a product that goes online and who the company is behind. Not a few consumers who have been disappointed in purchasing products through fake websites or online companies that are not responsible. As a result, when consumers will claim the purchase of a product it is not known how and what efforts can be made to these companies. This situation can reduce consumers' intention to shop on the internet; one of the solutions proposed by experts is to impose accreditation institutions that specifically certify companies that intend to open businesses through the internet so that consumers can trust these companies.

The more consumers are harmed by business actors; the function of the accreditation scheme needs to be observed because it will help form a symmetrical relationship between consumers and business actors. Business actors who have been certified will gain higher trust from consumers.

The purpose of the ITE Law is regulated in Article 4, which states as follows:

“The use of Information Technology and Electronic Transactions is carried out with the aim to:

- a. educate the life of the nation as part of the world information society;
- b. develop trade and national economy in order to improve community welfare;
- c. improve the effectiveness and efficiency of public services;
- d. open the widest possible opportunity for everyone to advance their thinking and ability in the field of use and utilization of Information Technology as optimally and responsibly as possible; and
- e. providing a sense of security, justice and legal certainty for users and providers of Information Technology. “

*Muhamad
Amirulloh
Vidya Noor
Rachmadin*

The ITE Law is a reference for people to transact electronically both businesses and consumers. One of the objectives of the establishment of the ITE Law mentioned in Article 4 letter e is, “to provide a sense of security, justice and legal certainty for users and providers of Information Technology”. This goal is indispensable given that in the global network there are very many efforts by certain parties who try to obtain electronic information and/or electronic documents belonging to other parties, whether by breaking into a security system or not. This behavior is based on the idea that electronic information and/or electronic documents are very valuable in the information age, which controls the information, and then he will get better benefits.

With the formulation and nature of the norms that only regulate as contained in Article 10 of the ITE Law, it will not be able to provide a strong impetus or influence for business people electronically in Indonesia to use Certificate of Trustworthiness, so that it will be difficult to create a good and developing Certificate of Trustworthiness system in Indonesia. With the development of the Certificate of Trustworthiness system, the purpose of establishing the ITE Law as contained in Article 4 letter e will experience obstacles and be difficult to achieve. In the end, cyber legal culture to implement Certificate of Trustworthiness in Indonesia also did not grow and develop.

This is clearly contrary to what Lawrence Lessig¹⁴ put forward, where the law, in this case, the ITE Law, has a strong influence on the “architecture” in this case the Certificate of Trustworthiness system to achieve the objectives of the ITE Law itself, through the formulation of norms on Certificate of Trustworthiness right. The aim of educating the life of the nation as part of the world information community, as stated in Article 4 letter a of the ITE Law will also be difficult to

achieve, because with the formulation of “norms regulating” in Article 10 precisely the citizens and businesses of Indonesian citizens will have difficulty obtaining access to a Certificate of Trustworthiness system very rare because it is not required. The community and business people of the Indonesian Citizens will be fooled by conditions as if there is no need for a Certificate of Trustworthiness system in electronic transactions. Indonesian people will be blinded from the world of electronic certification systems, allowing even the opportunity to become and develop a Certificate of Trustworthiness Institute.

The nature of the norms that “regulate” in Article 10 of the ITE Law which seems to negate the existence and role of Indonesia’s Certificate of Trustworthiness Institutions, also hampers the purpose of the ITE Article 4 letter d, namely “Opening the widest possible opportunity for everyone to advance thinking and ability in the field of use and the use of Information Technology is as optimal and responsible as possible.” Creativity and creation of Indonesian people will be hampered by using electronic certificates and forming or establishing an Indonesian Certificate of Trustworthiness Institution, when in fact the Indonesian people are able to do that.

This can be input and suggestions for further improvement of the ITE Law while looking at the condition of the economic development of the Indonesian people. If at any time the use of Certificate of Trustworthiness by business actors electronically is compulsory, it will trigger the industry of Certificate of Trustworthiness Institutions (LSK) in Indonesia. Organizers of electronic systems and transactions are expected to be able to switch to using local LSK because they have more value compared to foreign LSK, one of which is operating domestically. Local LSKs are able to check locations up to the business fields of electronic system and transaction providers. In addition, the regulation can later encourage foreign LSK to open companies in Indonesia to improve services to consumers.

Conclusion

1. The principle of legal certainty is not implemented properly with the formulation of the nature of norms that “regulate” and do not “force” in Article 10 of the ITE Law related to the existence and role of Certificate of Trustworthiness and Certificate of Trustworthiness Institutions in Indonesia. Legal certainty in the obligation to use certificates of trust and establishment of institutions of Certificate of Trustworthiness is still not fulfilled.

2. The achievement of the objectives of the establishment of the ITE Law as stipulated in Article 4 of the ITE Law is constrained and even difficult to achieve with the formulation of norms that only “regulate” and do not “force” related to the existence and role of Certificate of Trustworthiness and Certificate of Trustworthiness Institutions in Indonesia as stated in Article 10 ITE Law.

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