

The Implications in Implementation of the Acquisition of TikTok Shop with Tokopedia based on Regulation of Business Law in Indonesia

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Abstract. *On 4 October 2023, TikTok announced that it had closed buying and selling transactions on the TikTok Shop platform. This decision was taken in response to the Minister of Trade Regulation (Permendag) Number 31 of 2023 concerning Business Licensing, Advertising, Guidance, and Supervision of Business Actors in Trading through Electronic Systems which was recently enacted. The legal research method used in this research is normative juridical research which is research carried out or aimed only at written regulations with the nature of descriptive analysis research, which is a method that functions to describe or provide an overview of the object under study. The data source used is secondary data with quantitative data analysis. The results of this research are now TikTok Shop is running as usual by cooperating with Tokopedia, which has a marketplace licence and is still incorporated in the same application on 12 December 2023. The merger of the two companies raises the possibility of a potential monopoly in the E-commerce industry, as these two companies are two big players or companies in this industry that control most of the E-commerce market share in Indonesia, so that it can make players or E-commerce in Indonesia more competitive. So to overcome this, TikTok needs to apply for a business licence as a marketplace that is separate from its social media application to the Ministry of social media application to the Ministry of Trade, so that the position of the two applications stands on its own to prevent unfair business competition in the E-commerce industry and protect MSMEs and personal data leaks.*

Keywords: Acquisitions; E-Commerce; TikTok.

1. Introduction

The rapid development of technology has resulted in the emergence of various media or platforms for online shopping in Indonesia. The most recent of these online shopping platforms is TikTok. TikTok has become a popular platform for

businesses and entrepreneurs to market and sell their products directly to users of the platform. However, it has also been the subject of controversy in its legal oversight. Some of the legal issues that have been identified include dishonesty of businesses regarding the products they sell, discrepancies between the products ordered and those received by consumers, consumers' lack of understanding regarding the details of the products purchased resulting in misunderstandings between consumers and businesses, and a complaint process for returning goods that is not easy and takes a long time. It is known that TikTok only has a business licence as social media and not as a marketplace. This makes TikTok add an additional feature, namely TikTok "Shop" because there are no rules that prohibit and regulate in existing laws and regulations in Indonesia.

In the TikTok Shop application, sellers can carry out selling activities directly or live on social media so that buyers can interact through the comments column provided and there is a yellow basket to facilitate transactions between sellers and buyers. This phenomenon makes there is no limit for business actors in conducting trade in electronic media to increase income and provide comfort and convenience for users to make transactions via smartphones, computers and other electronic media.¹

However, the presence of additional TikTok Shop features in the TikTok application raises problems. Looking at *das sollen*, it is an obligation for the government to further strengthen the role of the Ministry of Trade and the Business Competition Supervisory Commission (KPPU) in overseeing trade flows, especially trade flows in electronic media such as the emergence of various applications in Indonesia so that there needs to be strict regulations in regulating and classifying the types of applications that should have a clear business licence for realising healthy and fair trade for every business actor, both offline and online shops. In *das sein*, the current regulation is considered less strict because it only prohibits social media providers (social-commerce) to facilitate transactions on their electronic systems. However, in reality there are still many social media organisers' applications that facilitate this, such as TikTok Shop, which has two functions at once, namely as social media and as a marketplace.

These applications can pose a threat to local business actors such as micro, small and medium enterprises with the emergence of predatory pricing practices or an effort made by companies by selling prices below the cost of production to kill other competing businesses which are then raised again when other competing businesses have been killed. This has led to unfair business competition in the trade ecosystem so that there needs to be an understanding of how to conduct good business ethics for business actors in accordance with the principles of

¹ Alwendi, (2020) Penerapan E-Commerce Dalam Meningkatkan Daya Saing Usaha, *Jurnal Manajemen Bisnis*, Volume 17, No. 3, p.213-217

justice in the business world. Therefore, there is a need for legal certainty and legal protection for business actors and consumers who transact in e-commerce despite Article 4 letter e of Law Number 7 Year 2014 on Trade which has regulated electronic system trading (e-commerce).

On 4 October 2023, TikTok announced that it had closed buying and selling transactions on the TikTok Shop platform. This decision was taken in response to the recently enacted Minister of Trade Regulation (Permendag) Number 31 of 2023 concerning Business Licensing, Advertising, Guidance, and Supervision of Business Actors in Trade through Electronic Systems. This regulation regulates business licences, advertising, guidance, and supervision of all business actors in trade conducted through electronic systems or e-commerce. The MOT was signed on 25 September 2023 and took effect on 26 September 2023. With this new regulation, social commerce platforms such as TikTok, Instagram, and Facebook are not allowed to conduct buying and selling transactions directly in the application or website of the social media. These social media platforms may only facilitate the promotion of goods and services sold by merchants and must comply with the provisions contained in the regulation.

2. Research Methods

This research uses normative juridical research and the nature of this thesis's research method is descriptive analysis, namely research that describes, examines, explains and analyzes a legal regulation, in this case related to Implications In The Implementation Of The Acquisition Of TikTok Shop With Tokopedia On The Regulation Of Business Law In Indonesia, Source The legal materials used in this research are secondary data which is data obtained from official documents, books or any form of research related to research objects and research results in the form of reports, journals, theses, dissertations and statutory regulations. The data analysis technique used is qualitative data analysis, namely a research procedure that produces analytical descriptive data, namely by collecting materials and data as well as applicable regulations and legislation which are then analyzed using logical legal thinking.

3. Result and Discussion

TikTok Indonesia temporarily closed its online shopping service in October 2023 following new regulations from the Indonesian government that prohibit social media from offering online buying and selling transactions on the app. The new rules come amid concerns that more and more goods are being imported through e-commerce platforms, reducing the sales of traditional retailers TikTok Shop finally reopened on 12 December after being closed in October 2023. This time TikTok Shop again collaborated with Tokopedia. Following the merger of TikTok and Tokopedia, a number of initiatives will be undertaken to support

MSME businesses in Indonesia, including promoting local products. developing skills and resources from production to marketing, as well as opening digital talent development centres across Indonesia. MSMEs are an industry that is believed to have resilience to the global financial crisis. According to Law Number 40 of 2017 concerning Limited Liability Companies (UUPT) is a legal action carried out by one or more companies to merge with other existing companies, so that the assets and liabilities of the companies that bind themselves are, by law, transferred to the merging companies, after which the legal personality of the merging companies also ends by law. TikTok, which is under the auspices of China's Bytedance, plans to invest more than US\$1.5 billion (Rp 23.4 trillion) in the long term in Indonesia's largest e-commerce platform, Tokopedia. The deal comes after TikTok Shop was shut down due to the Indonesian government's ban on online shopping on the platform. Based on this latest agreement, TikTok will control more than 75% of Tokopedia's shares and integrate its TikTok Shop business with the marketplace on 4 October 2023.

For online entrepreneurs and business startups, there are several benefits of selling on TikTok Shop, namely:²

1) A social media app that makes shopping easy Usually when using social media, when searching for a product of interest, it is best to leave the social media platform and be directed to the e-commerce website. However, with TikTok Shop, there is no longer a need to worry about scrolling on separate platforms, as TikTok combines the two into one. This feature not only allows connecting to social media, but also makes it possible to sell and shop online anytime, anywhere.

2) Expand Business Market If you have experience selling online, this feature provides a new way to grow your business. The bigger the number of TikTok users, the bigger the market opportunity. This will certainly increase the company's sales. Apart from some of the advantages that TikTok Shop offers from a digital marketing point of view, the TikTok app has a very high engagement rate compared to other social media apps.

According to the Ministry of Information and Communication, the engagement rate on TikTok reaches 17.96% per upload, compared to only 3.86% on Instagram and only 1.63% on YouTube. This high engagement rate certainly makes it easier for businesses to increase trust and communication with consumers. These compelling numbers make TikTok an attractive platform for businesses to expand their market reach and build strong relationships with their audience. With the

² Candra Sahputra, et.al, (2022) Kebebasan Jual Beli Online (E-Commerce) Menurut Hukum Di Indonesia, *Jurnal Panorama Hukum*, Vol 7 No 1, p.339-347

acquisition of Tokopedia shares, TikTok effectively presents itself as a major shareholder in a leading e-commerce platform. This may raise questions around TikTok's compliance with the government's previous ban on e-commerce. It is worth keeping an eye on whether this share acquisition will positively impact TikTok's policy changes regarding e-commerce transactions on its platform. or to what extent TikTok will follow the applicable regulations. The purpose of Law No. 5/1999 is to protect the public interest, develop the efficiency of the national economy, optimise people's welfare, control fair business competition and ensure equitable business opportunities for large companies in a stable business environment by ensuring the stability of small and medium enterprises (MSMEs), prevent monopolistic behaviour by economic entities and unfair business competition, and realise the effectiveness and efficiency of business activities.³

TikTok, a popular social media platform, acquired Tokopedia, one of the largest e-commerce platforms in Indonesia. TikTok invested US\$1.5 billion into Tokopedia and holds a controlling stake of 75.01%. This means that Tokopedia and TikTok Shop Indonesia will be combined under PT Tokopedia. As a result of this partnership, TikTok will move customer shopping transactions from the TikTok application to the Tokopedia application. Regulation of the Minister of Trade Number 31 Year 2023 concerning Business Licences, Advertising, Supervision, and Guidance of Business Actors in Trading Through Electronic Systems. Article 21 Paragraph (1) states that in conducting Trading Through Electronic Systems (PMSE), Business Actors are obliged to comply with provisions of laws and regulations related to business licences, standards or technical requirements for Goods and/or Services, as well as Goods and/or Services whose trade is prohibited or restricted, distribution of Goods, and taxation. In particular, paragraph (3) confirms that "Trading Through Electronic Systems (ETSE) organisers with a social commerce business model are prohibited from facilitating payment transactions in the ETSE them"

With the acquisition made by TikTok against tokopedia, TikTok can legally become a social e-commerce with collaboration with an e-commerce company, namely tokopedia so that TikTok does not violate the regulation of the minister of trade number 31 of 2023. with the acquisition and cooperation between TikTok and Tokopedia so that TikTok can operate again based on Regulation of the Minister of Trade Number 31 of 2023 concerning Business Licensing, Advertising, Guidance, and Supervision of Business Actors. Business Licensing, Advertising, Guidance, and Supervision of Business Actors in Trade in Trading through Electronic Systems with the hope that TikTok Shop can increase local MSMEs where now those who have merged with Tokopedia only contain local

³ Cindy Aulia Khotimah, (2022), *Perlindungan Hukum Bagi Konsumen Dalam Transaksi Jual Beli-Online (E-Commerce)*, *Business Law Review*, Vol 1 No 2, p.401-415

MSME products. products only. But on the other hand, there is a strong reason that TikTok Shop still needs to be closed and banned from operating in Indonesia because there is still a discrepancy between TikTok Shop and the Minister of Trade Regulation Number 31 of 2023 concerning Business Licensing, Advertising, Guidance, and Supervision of Business Actors in Trade through Electronic Systems. Trading through Electronic System. Where the platform should adjust to the existing regulations, TikTok Shop must fulfil the existing regulations first before it can restart its operating in Indonesia.

Business licences regulated by the Minister of Trade Number 50 of 2020 that business actors are required to have a business licence in conducting business activities in trading through electronic systems (PMSE), by registering the number, name and issuing agency of the business licence from the country of origin that is still valid to the organiser of the PMSE.⁴ the issuing agency of the business licence from the country of origin that is still valid to the organiser of organiser by submitting a business licence application to the OSS institution. OSS institution. The business actor referred to in this provision is for every individual or business entity that forms an electronic system. individual or business entity that forms a legal entity or is not a legal entity which can be in the form of domestic business actors and foreign business actors who carry out business activities in the field of trade through electronic systems (PMSE). This is still vague in granting business licences to business actors, in particular organisers of trading through electronic systems (PPMSE) because this MOT Regulation does not explicitly regulate the business model of PPMSE. has not explicitly regulated the current business model of PPMSEs such as the emergence of social e-commerce, marketplaces, online retail, platforms, and others.⁵

Therefore, MOT 50/2020 is revoked because it is no longer in line with the current legal developments and the needs of society. with the development of the law and the needs of today's society so that it is replaced by MOT 31/2020. the Minister of Trade regulation Number 31 of 2023 has brought significant differences in the governance of trade through electronic systems, aiming to simplify governance of trade through electronic systems aims to facilitate guidance and supervision, such as the definition of organisers of trade through electronic systems. guidance and supervision, such as the definition of trade organisers through electronic electronic systems with business models such as online retail, marketplace or marketplace, online classified ads, intermediaries or platforms, daily deals, social commerce.⁶ The issuance of the Minister of Trade

⁴ Richardus Eko Indrajit, (2021), *E-Commerce: Kiat dan Strategi Bisnis Di Dunia Maya*, Elex Media Komputindo, Jakarta, p.108-110

⁵ Yudha Sri Wulandari, (2018), *Perlindungan Hukum bagi Konsumen terhadap Transaksi Jual Beli E-Commerce*, *Ajudikasi Jurnal Ilmu Hukum*, Vol. 2 No. 2, p.45-49

⁶ Abdul Halim Barkatullah dan Teguh Prasetyo, (2015), *Bisnis E-Commerce: Studi Sistem Keamanan dan Hukum di Indonesia*, Pustaka Pelajar, Yogyakarta, p.65

regulation number 31 of 2023 is the reason TikTok has taken a step by partnering with Tokopedia as a marketplace. by cooperating with Tokopedia as a marketplace and TikTok Shop was reappeared on 12 December 2023. because Tokopedia has made an exclusive contract with TikTok Shop. TikTok Shop 340 million, TikTok investment to Tokopedia 840 million, TikTok Promissory note 1 billion, a total of \$1.5 billion. TikTok acquired 75.01% of Tokopedia shares through an agreement between TikTok and PT GoTo Gojek Tokopedia Tbk (Goto) with the aim of expand, strengthen and drive the growth of the digital economy in Indonesia with a focus on providing benefits for users and businesses, especially micro, small, and medium enterprises

4. Conclusion

Differences in the regulation of trading licences on TikTok Shop as an additional feature on the TikTok application, previously regulated in Ministerial Regulation Number 50 of 2020, does not yet regulate the classification of types of trading businesses through the TikTok system. does not yet regulate the classification of types of business actors trading through electronic systems and there is no explicit prohibition for social media organisers for and there is no explicit prohibition for social media providers to facilitate transactions on their electronic systems. facilitate transactions on its electronic system. Then in its development, the ministry of trade issued a strict regulation on TikTok in Regulation of the Minister of Trade Number 31 of 2023 in Article 21 Paragraph (3) that PPMSE with a social-commerce business model, namely social media organisers are prohibited from facilitating payment transactions on electronic systems. TikTok only has a licence as social media, not as a marketplace, so it must be separated between social media and marketplace. So to overcome this, TikTok needs to apply for a business licence as a marketplace that is separate from its social media application to the Ministry of social media application to the Ministry of Trade, so that the position of the two applications stands on its own to prevent unfair business competition in the E-commerce industry and protect MSMEs and personal data leaks.

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