

A Comparison Between Chinese E-Commerce Laws And Indonesian Information And Electronic Transactions Laws Against Cross-Border Online Services

Guan Yue, Dwidja Priyatno, Anita Kamilah

Abstract: China officially applies the Electronic Commerce Act, especially for cross-border online services. The same thing was done in Indonesia. The purpose of this article is to analyze the comparison between Chinese and Indonesian E-Commerce laws against cross-border online services. The method used in this article is a qualitative research model with a research library approach in the form of normative juridical analysis. The conclusion of this article is that compared with the Chinese Electronic Commerce Act, the Indonesian information and electronic transactions (ITE) law has clear deficiencies. As the fastest growing e-commerce country in Southeast Asia, Indonesia must introduce specific e-commerce laws to regulate cross-border online services from aspects of e-commerce business registration, taxation, authenticity of product information, accountability of third-party platforms, and etc.

Keywords: cross-border online services, e-commerce, comparison.

1. INTRODUCTION

Under the background of economic globalization, relying on the development of e-commerce and the improvement of internet technology, online cross-border services have developed rapidly. At present, the cross-border online services industry has become a growing industry, with various network information platforms such as Facebook, Instagram, Youtube, TaoBao, Shopee and others. Increasing demand for foreign goods, cross-border online services continue to grow to become one of the main consumption methods of society. In addition, as the pace of reform and openness in Indonesia has increased from year to year, more and more people have gone abroad to study, work and live abroad, and have also spawned a business in the service of sending foreign goods for domestic sales [1]. However, as a form of developing economy, cross-border

online services face many disadvantages. Some online shop services entrusted from abroad have adopted a false declaration, a hidden declaration, to avoid customs supervision and avoid the obligation to pay customs. As a result, state revenue has been lost, so that it can damage the interests of the national economy. Considering that quite a number of issues have arisen from online courier services, on August 31, 2018, the Chinese National People's Congress formally issued the "People's Republic of China Electronic Commerce Law", which took effect on January 1, 2019. The law was to guarantee the rights and the legitimate interests of the parties towards e-commerce and regulating the behavior of e-commerce, e-commerce businesses, warehouses, logistics, payment settlement and several e-commerce links which specifically have 89 (eighty nine) articles [2]. At present, Indonesia has introduced reform policies for e-commerce, such as Minister of Finance Regulation Number 210 of 2018 concerning Tax Treatment of Trade Transactions through Electronic Systems that was enacted on December 31, 2018. However, Indonesia does not yet have a complete e-commerce law, and e-commerce regulations are only attached to Law No. 7 of 2014 concerning Trade and Law No. 19 of 2016 Juncto Act No.11 of 2008 concerning Information and Electronic Transactions. So the research question in this article is how is the difference between Law

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No. 19 of 2016 concerning Electronic Information and Transactions with the China Electronic Trade Law 2019 in regulating cross-border online safekeeping services.

2. METHOD

The method of approach used in this paper is normative jurisdiction that is by studying or analyzing secondary data by understanding the law as a set of positive rules or norms in applicable legislation, so this research is understood as a library research, namely to research secondary materials [3]. In line with the title of this paper, the secondary data review was carried out by comparing the Indonesian legal system with the Chinese legal system.

3. RESULTS AND DISCUSSIONS

In e-commerce activities known as online cross-border entrust services as "business + technology + globalization" products that meet international features. However, at present there is no definitive definition of cross-border online services. "Cross-border" means that the production and sale of goods takes place outside the country or customs border region, and not within the country or customs border region [4]. "Custodian Services" means helping to buy goods, because consumers themselves are looking for custodian products by agents or other companies for some reason, the product is finally sent to consumers in a certain way. "Online" means that the agent or service company entrusted to publish product information through an internet platform, and consumers complete a series of consumption processes through information on network products, network communications and network payments [5]. "Online Cross Border Services" can be defined as a new shopping method in which businesses complete purchasing behavior and consumption behavior with consumers who have demand to buy products from abroad or customs border areas [6]. The internet has been popular in Indonesia for only a short period of ten years. The earliest form of "cross-border online safekeeping services" in Indonesia can be attributed to private entourage services, for example when someone wants to travel abroad, relatives and friends often ask to buy some genuine products from the destination country and bring them back home. . Gradually, the pure deposit service of friends and relatives gradually developed into a way of making money for depositors, and the online e-commerce platform provided the basis for this mode of transaction, so this new business operating model of cross-

border deposit services boundary appears [7]. At present, the law governing the behavior of Indonesian cross-border online e-commerce services is Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions (ITE) perceived as cyberlaw in Indonesia, to regulate the legal protection of consumers in e-commerce transactions [8]. This law covers all matters related to cyberspace such as electronic information, electronic documents, electronic signatures, e-commerce, domain name regulation, intellectual property rights, protection of personal rights, false and misleading news, news of hate and hostility, threats of violence and frighten, etc. Therefore, the Author believes that the ITE Law cannot be considered as a specific law for e-commerce [9]. On January 1, 2019, China implemented the Electronic Commerce Act, the three most important points in the China Electronic Commerce Act concerning cross-border online services include:

- a. Having Licensing. Whatever is entrusted, it must have a permit, and that is a business permit from the country of origin and China. Article 10 of the Electronic Commerce Act of China stipulates that: e-commerce operators must handle market entity registration in accordance with the law. Individual private business operators need to apply for a business permit as well, and if it is a product purchased from Indonesia and sold in China, it is necessary to apply for an Indonesian business permit as well;
- b. Obligations to pay taxes, and violations of tax avoidance will be subject to criminal penalties. Article 11 of the Electronic Commerce Act of China stipulates that: E-commerce operators must fulfill their tax obligations in accordance with the law and enjoy tax incentives in accordance with the law). Article 88 of the Electronic Commerce Act of China stipulates that: Which constitutes a criminal offense will be investigated due to criminal liability according to law. According to Article 207 of Chinese Criminal Law: If a taxpayer adopts fraudulent or hidden methods to make false tax returns or does not make tax returns, and avoids the amount of tax payments and accounts for more than 10% (ten percent) of the amount of tax imposed, will be sentenced to long term imprisonment of not more than three years or a detention sentence. If more than 30% (thirty

percent) of the taxable amount will be sentenced to a permanent prison term of not less than three years and no more than seven years, and will be fined;

- c. Health care products may not be sold if they do not have the Chinese label or are produced by factories that do not have the National Certification and Accreditation Administration certification. Article 15 of the Chinese Electronic Commerce Law stipulates that: E-commerce operators must continue to publish business permit information and administrative permit information related to their business, information that does not require market entity registration in accordance with Article 10 of this law, or an identifying information link in a prominent position on the website's homepage. For example, for entrusted food services, in addition to having a business permit for entrusted services, entrusted business operators must also have a food circulation permit, and a Mandarin label must also have a package. Indonesian unique health products such as Indonesian bird's nest, must also paste the trace source code. The trace source code is a two-dimensional code attached to a dry bird's nest. Consumers can scan the China bird's nest traceability management service platform to check whether the bird's nest purchased is from a legitimate overseas bird's nest manufacturing company (10).

Benefits of applying the China Electronic Commerce Act to cross-border online deposit services:

- a. Less likely to get fake goods. Article 17 of the Electronic Commerce Act of China stipulates that e-commerce businesses must disclose information on goods or services in a comprehensive, correct, accurate and timely manner to protect the right of consumers to know and choose. E-commerce entrepreneurs must not engage in false or misleading trade propaganda through fictitious transactions or evaluating fake users to deceive or mislead consumers. After the adoption of the Electronic Commerce Law, it is not easy for the business services entrusted to sell counterfeit goods again. Regulation is getting tougher, and it is less likely to get fake goods;
- b. The e-commerce platform has "shared" responsibilities. If there are problems with the

seller's merchandise on the platform, such as fake milk powder, fake bird's nests, fake cosmetics, etc., then the platform must be held responsible too. In this way, it will be more secure and safer to buy goods on e-commerce platforms [11].

- c. More authentic business data. E-commerce entrepreneurs are not allowed to make false or misleading trade propaganda with wrong transaction records or make false evaluations, and deceive or mislead consumers. If not, the maximum fine imposed is ¥ 500,000 (five hundred thousand yuan), around Rp. 1,050,000,000 (one billion and fifty million rupiah). In this way, consumers can find out the true situation of the business services entrusted more accurately.
- d. Advances can be returned without reason. In cross-border online entrust services, many entrusted business operators ask consumers to pay an advance. The Electronic Commerce Act of China states that if an e-commerce businessperson receives an advance according to the consumer concerned, it must state the method and procedure for the refund, and it is forbidden to set unreasonable provisions for a refund. If the consumer asks for a refund for an advance and meets the conditions of return, the e-commerce business actor must return the down payment in a timely manner [12].

As laws related to e-commerce activities, the Indonesian ITE Law and the Electronic Commerce Act of China have the same points and different points for cross-border online services, namely:

- a. Business Actor Registration. Article 10 of the Electronic Commerce Act of China stipulates that e-commerce businesses must deal with the registration of market entities in accordance with the law, and Article 10 paragraph (1) of the ITE Law stipulates: every business actor conducting Electronic Transactions can be certified by the Reliability Certification Agency. The e-commerce market is actually a high risk market, and the transaction security situation is more serious than traditional markets. Therefore, comprehensive prevention is needed in many aspects, and certificate registration is the simplest and most effective way of prevention and control. As a

gateway for market access, this is the front end control of market risk. As an examination of the subject's condition, this is the most critical and most important link. As an integrated registration method, it is also a control method with the lowest investment costs and the highest overall utility [13]. However, many people say that online deposit services, especially those on social media, are small businesses that are not trading activities, so there is no need for market registrants. The author believes that the operation of private cross-border online services is a typical online business and commercial activity. Most private online store transactions are for profit, have their own shop name and deliberately promote through third-party trading platforms, social media, etc., and trading behavior has long-term, sustainable and planned features. Unlike the occasional sale of goods that are used alone, cross-border online services already have business characteristics [14]. Therefore, a personal online store that applies a cross-border online entrust service is certainly a trading subject that must be registered. On the basis of affirming the registration of e-commerce entities, the Chinese Electronic Commerce Act also stipulates that "there is no need to obtain permission to provide labor services, household crafts, agricultural products for self-production and sale, and no business registration is required in accordance with the law and regulation". Such regulations make e-commerce subject registration systems have rigid requirements and flexible spaces, which are better suited to the complex needs of the legal system in developing e-commerce markets. At the same time, in accordance with the provisions of the Chinese Electronic Commerce Act, in addition to the relevant licenses from the Chinese government, cross-border online service providers must also have licenses relevant to the country where the business actor is located. This increases barriers to entry for cross-border online service industries, begins to oversee product quality from its source, and ensures healthy industrial development [15]. Indonesia's current oversight of these aspects has not been strict. Entrepreneurs with cross-border online services only need to have relevant licenses

in Indonesia, and do not need to show permits from other countries;

- b. Taxation. Taxation of e-commerce activities is regulated in the Chinese Electronic Commerce Act, whereas the Indonesian ITE Law does not have provisions on taxation of e-commerce, but is separately enacted with PMK-210/PMK.010 /2018. The author believes that online cross-border services are branches of e-commerce, and e-commerce is a very complex industry involving economy, computers, finance, logistics, information technology, law, languages, etc. [16]. Therefore, there must be a special law to regulate the e-commerce industry, not just to rely on it in other laws;
- c. Consumer protection. Explanation of the ITE Law explains that "complete and correct information" includes legal subject information and product or service information. However, China's Electronic Commerce Act specifies information including product information, legal subject information, transaction information, customer evaluation information. Offline transactions can be understood through direct contact with people, and can be assessed through face-to-face communication. Online transactions mainly make trading decisions based on information obtained, and humans have Crowd Psychology. As a group of species, humans will consider the relationship between individuals and groups. Under the pressure of current social or group relationships, individuals will change their attitudes towards things, give up their own ideas, and produce behaviors that are consistent with most people. This psychological reaction is Crowd Psychology [17]. Especially for cross-border online transaction services, buyers cannot immediately see products abroad. In many cases, buyers can only make a decision whether to buy through data on the number of store transactions or buyer's evaluation of the product. It can be said that the greater the number of transaction data, the more people will buy. Therefore, many businesses use fake transaction data, fake evaluations and other information to deceive buyers. False information that deceives consumers, China's Electronic Commerce Act has made very strict regulations, and third-party platforms are also very serious

about the behavior. For example, Taobao's punishment for fake evaluations and fake transactions is that the related product is demoted, and the serious ones will be closed forever and even criminally responsible. [18].

Through cross-border online services, cheap products from abroad can enter the country and improve the living standards of domestic people. Therefore, Indonesia's upcoming e-commerce laws should not only limit the behavior of online cross-border surrogate services, but must pay more attention to promoting healthy development of the cross-border online entrust service industries such as the China Electronic Commerce Act. Economists argue that countries benefit from international trade. Adam Smith in his book *The Wealth of Nations* states that: If a foreign supply can supply us with a commodity cheaper than we ourselves can make it, better buy it of them with some parts of the produce of our own industry, employed in a way in which we have some advantage. The general industry of the country,... will not be diminished, no more than the above-mentioned artists, but only left to find out the way in which it can be employed with the greatest advantage. It is certainly not employed to the greatest advantage, when it is thus directed toward an object which it can buy cheaper than it can make [19]. Therefore, trade can make everyone's situation better. Thus, Indonesia must make complete e-commerce laws in order to maximize the advantages of cross-border online services.

CONCLUSION

Compared to the Chinese Electronic Commerce Act, it is clear that the ITE Law can no longer adapt to the rapid development of the cross-border online services industry at this time. The ITE Law does not stipulate issues such as cross-border online services tax income, entrusted product information services, and the authenticity of online store information, which has caused the Indonesian e-commerce industry to have relevant laws, but problems still arise. At present, Indonesian law does not yet have a macro regulation regarding the regulation of online cross-border surrogate services, there are no specific laws and regulations for cross-border online surcharge services, only referring to the applicable laws and regulations in the field of online shopping and e-commerce. The benefits of applying special laws to e-commerce are very clear, and e-commerce is a complex and rapidly growing industry, so Indonesia must start making laws specifically for cross-

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