

Prohibition on Social Business Transaction Practices of E-Commerce Tiktok Shop Based on The Minister of Trade Regulation No. 31 of 2023

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Abstract

The main concept in the development of social commerce based on the Regulation of the Minister of Trade of the Republic of Indonesia Number 31 of 2023 concerning Business Licensing, Advertising, Guidance, and Supervision of Business Actors in Trading Through Electronic Systems based on article 21 number 3 is that Electronic Trading Organizers (PPMSE) with a Social Commerce business model are prohibited from Facilitating Payment Transactions on their Electronic Systems. The prohibition on social commerce that carries out online transactions at the same time on one platform in Indonesia is related to efforts to prevent potential monopolies. There should not be two shopping functions on one platform with social media, this must be separated because this is related to licensing and supervision issues. The prohibition on direct transactions on social commerce aims to prevent control of algorithms to protect personal data from business interests. All platforms that provide direct transactions are prohibited because they can create unfair business competition, especially the TikTok Shop platform can use user information to control the algorithm on TikTok Shop, user data without permission is used for marketing and sales purposes, this can lead to market control and result in potential monopolistic practices. The research that has been conducted is a normative legal research that focuses on norms and legal objects as the main data. The results of this study are: (1) the Ministry of Trade issued strict regulations to TikTok in the Regulation of the Ministry of Trade Number 31 of 2023 in Article 21 Paragraph 3 that PPMSE with a social-commerce business model, namely social media organizers, are prohibited from facilitating payment transactions on electronic systems. TikTok only has a license as a social media, not as a market place, so social media and market place must be separated. (2) The prohibition on combining e-commerce with social media in the same application is regulated in the 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 organizers, are prohibited from facilitating payment transactions on electronic systems. In this regulation, social commerce must first obtain a permit before being able to operate in Indonesia. This regulation prohibits social media and social commerce from facilitating transactions and payments like e-commerce. Social commerce is only allowed for promotion or advertising without transactions. (3) The results of the analysis with the emergence of legal uncertainty in the Tiktok Shop incident which combines social commerce and e-commerce in one social media platform are, First, the business operations carried out by Tiktokshop are contrary to the Regulation of the Minister of Trade Number 31 of 2023, which prohibits the combination of social commerce with e-commerce. Second, there are no significant changes to the previous TiktokShop with the current Tiktokshop, such as social e-commerce transactions which are still carried out on the Tiktok social media application itself. Third, there are indications of legal uncertainty. The government at one time prohibited the Tiktokshop business practice for various considerations, but in a short time later allowed the business practice again using the same legal regulations as the regulations to prohibit the Tiktokshop business practice.

Keywords: *Prohibition of E-Commerce Social Business Transaction Practices, Tiktok Shop, Trade Regulation No. 31 of 2023*

INTRODUCTION

Technological advances have resulted in an increase in the accessibility of information and communication, which was initially conventional to digital, widely and quickly. The internet makes it easy for

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anyone to get information without limitations of space and time. Technological advances also have an important influence on business continuity. The real form of technological progress in the business world is the formation of a business information system in the form of E-commerce, which is an electronic commerce or digital buying and selling transaction process with the help of the internet and an information system. One of the E-commerce that is currently popular among the Indonesian people is Tiktok Shop.

TikTok Shop is one of the e-commerce features owned by the TikTok application. This feature is available for TikTok users with business accounts. Users who own a TikTok Shop account can promote and sell products in the application. So other users do not need to switch to using other marketplace applications to shop, because it can be done in one application

Tiktok is an interesting entertainment application that contains various types of videos, including dances, tutorials, comedy, and other creative content. Tiktok is one of the most popular applications in the world and allows its users to create videos with a duration of 15 seconds to 1 minute accompanied by music and several other interesting features". The Tiktok application is at the top of the entertainment platform with the largest number of daily users reaching 92.2 million users.

TikTok initially focused only on entertainment through interesting videos, now it has introduced a new feature called TikTok Shop, which allows users to make online buying and selling transactions or e-commerce. Tiktok Shop is used for transactions in the sale of products in the fields of fashion, food, cosmetics, and service offerings. This can create opportunities to increase sales. The TikTok social media platform has great potential to help business people increase product sales, especially for online businesses that do not have physical outlets and rely on social media as their main sales channel. Therefore, business people need to design an effective marketing strategy to increase their sales volume. One example is creating interesting content such as videos or live streaming that focuses on the products they offer. This action has a significant positive impact on increasing sales through their TikTok social media platform.

On October 4, 2023 at 17:00 WIB, TikTok Shop officially stopped its operations. The decision was issued due to a ban by the Ministry of Trade as stated in the Regulation of the Minister of Trade Number 31 of 2023 concerning Business Licensing, Advertising, Guidance, and Supervision of Business Actors in Trading Through Electronic Systems which was enacted on September 26, 2023. Through the Regulation of the Minister of Trade Number 31 of 2023, the Indonesian Government officially prohibits the combination of social commerce with e-commerce. Social commerce platforms are only allowed to promote goods or services, and are prohibited from providing payment facilities or conducting product trading transactions within the application.

Special Staff of the Minister of Cooperatives and SMEs (MenKopUKM) for Creative Economy Empowerment, Fiki Satari explained the dangers of a platform running a social media business with e-commerce simultaneously. There are at least four reasons, said Fiki, that a platform creator is prohibited from running the business simultaneously. :

1. First, a platform can monopolize the market. Ironically, the monopoly of traffic flow is carried out without the user realizing it. They are directed to buy certain products without them realizing it. "Monopoly occurs when a platform has the ability to control the market, unfair pricing, different treatment, and discriminatory pricing based on the data it has.
2. Second, platforms can manipulate algorithms. Platforms that have social media and e-commerce at the same time can easily push certain foreign products to appear continuously on users' social media and at the same time make it difficult for local products to appear on social media. This algorithm manipulation allows platforms to benefit one product while at the same time discriminating against other products.
3. Third, the platform can utilize traffic. Social media has very large traffic and can currently be utilized as navigation or triggers in purchases in e-commerce. This purchase trigger should not be captured by e-commerce that is on the same platform as social media. If this happens, then there is no equal playing field in the digital industry in Indonesia.
4. Fourth, data protection. If we look at Law Number 27 of 2022 concerning Personal Data Protection, the processing of personal data is carried out in accordance with its purpose. Because social media is intended for entertainment, the data obtained from it is not for trading.

Based on the explanation above, it can be concluded that the Regulation of the Minister of Trade No. 31 of 2023 clearly requires that social media and e-commerce social transactions must be separated because they have many negative impacts on Indonesian society. The separation of social media and e-commerce social transactions is very necessary, one of which is to maintain data security, data misuse will be more difficult if it is divided into two different platforms. In addition, the supervision carried out can also be more optimal because it

does not overlap, not only that, a platform also cannot use its social media algorithm to sell.

The Ministry of Trade summarizes several main points regulated in Permendag No. 31 of 2023 concerning Business Licensing, Advertising, Guidance, and Supervision of Business Actors in Trading Through Electronic Systems, especially the articles that clearly regulate social commerce, namely:

- a. Article 1 Paragraph 17 states that social commerce is a social media provider that provides certain features, menus and/or facilities that enable merchants to post offers for goods and/or services.
- b. Article 21 Paragraph 2 states that Electronic System Trading Organizers (PPMSE) with a marketplace and/or social commerce business model are prohibited from acting as producers in accordance with the provisions of laws and regulations in the field of goods distribution.
- c. Article 21 Paragraph 3 states that PPMSE with a social commerce business model is prohibited from facilitating payment transactions on its electronic system.
- d. Article 13 Paragraph 3 regulates that there is no connection or interconnection between the electronic system used as a PMSE facility with the electronic system used outside the PMSE facility; and that there is no misuse of control of user data for use by PPMSE and/or affiliated companies in its electronic system.
- e. Article 19 Paragraph 2 regulates the determination of a minimum price of USD100 per unit for finished goods originating from abroad that are directly sold by traders to Indonesia via e-commerce platforms.

Based on these provisions, especially Article 21 paragraph 3, it can be explained that trade through electronic systems with a social e-commerce business model is prohibited from facilitating payment transactions on its electronic system. Indonesian President Joko Widodo also said that online trading that allows sellers to transact directly on social media has caused a slump in market traders' sales. Meanwhile, the Ministry of Trade is concerned about the use of personal data by TikTok for business purposes. As a result, this could make TikTok monopolize the market because of the game of social media algorithms. Minister of Trade Zulkifli Hasan once said that TikTok's social media was not the main problem. However, TikTok must be able to separate that social e-commerce must have its own permit. So TikTok and TikTok Shop must separate themselves, of course with the permits that have been obtained.

TikTok Shop is back in operation in Indonesia, after the social media app announced its partnership with technology company GoTo Gojek Tokopedia on Monday, December 11, 2024 and precisely on Tuesday, December 12, 2024, TikTok Shop officially reopened. TikTok Shop collaborated with Tokopedia by controlling 75.05% of the company's shares. This was welcomed by merchants and affiliates (content creators who usually promote products through TikTok videos and live broadcasts). TikTok management also wrote to former sellers to reopen their businesses. The legal issues related to the closure and reopening of Tiktoshop business operations are very interesting and important to study. There are at least several important reasons for research on the "Prohibition of Social Business Transaction Practices of Tiktoshop E-Commerce Based on Permendag No. 31 of 2023" as follows:

First, the business operations carried out by Tiktoshop are contrary to the Regulation of the Minister of Trade Number 31 of 2023, which prohibits the combination of social commerce with e-commerce. Social commerce platforms are only allowed to promote goods or services, and are prohibited from providing payment facilities or conducting product trading transactions within the application. In addition, such business operations also pose various potential negative impacts and risks.

Second, the reopening of TikTok has invited public controversy because in fact, after TikTok was operational again, there were no significant changes to the previous TikTok, such as with social e-commerce transactions still being carried out on the TikTok social media application itself, where consumers can easily carry out social e-commerce transactions and make payments on the application. According to the Minister of Trade (Mendag) Zulkifli Hasan, social media may only be used for promotion, as with mass media such as television (TV). As a social media platform, TikTok is only allowed as a means to provide offers of goods or services and accommodate promotional activities, not direct transactions on the platform.

Therefore, the Ministry of Trade issued Regulation of the Minister of Trade No. 31 of 2023 concerning Business Licensing, Advertising, Guidance, and Supervision of Business Actors in Trade Through Electronic Systems in Article 21 paragraph (3) it is explained that PPMSE with a social commerce business model is prohibited from facilitating payment transactions on its electronic system.

Third, there is an indication of legal uncertainty. The government at one time banned the Tiktoshop business practice for various reasons, but in a short time later allowed the business practice again using the same legal regulations as the regulations to ban the Tiktoshop business practice. Based on these provisions, it is clear

that social media and social transactions of E-Commerce must be separated. The re-operation of TikTok Shop makes the author assume that the government's decision is sudden and violates the regulations that have been set in the Minister of Trade Regulation No. 31 of 2023 concerning Business Licensing, Advertising, Guidance, and Supervision of Business Actors in Trade Through Electronic Systems. Based on the description above, research on "Prohibition of Social Business Transaction Practices of E-Commerce TikTok Shop Based on Minister of Trade Regulation No. 31 of 2023".

FORMULATION OF THE PROBLEM

Based on the background above and to provide research limitations, several problems are formulated, as follows:

1. How is the analysis of trade transaction practices through electronic systems (PMSE) before the Minister of Trade Regulation No. 31 of 2023?
2. How is the prohibition on combining social commerce and e-commerce practices on one social media platform based on regulations in Indonesia?

RESEARCH METHODS

The research method used in this study is normative legal research. In the process of making normative legal research is done by researching the law that is viewed based on norms, various rules, legal principles, legal doctrines, legal principles, and legal theories from various existing literature to answer the legal issues being studied. The purpose of this study using normative legal research is because the main issue in the study is the norm, in this case the norm is read as a statutory regulation (positive law). Normative research comes from the word norm and gets the adjective suffix 'if' or 'ive' (normative/normative) so that the main issue in the study can be said that the law is empty or there is legal ambiguity or there is antinomy (conflict) of two or more positive laws so that it causes legal uncertainty. This normative legal research can also be simply said to be a document study because it only focuses on researching existing library materials.

Normative legal research focuses on doctrine through the analysis of legal rules found in legislation. Therefore, the focus is formal law (law in the book), so that the validity of its findings is not influenced by the empirical world, but is viewed from the side of legal positivism. Because it relies on formal law, the data source is secondary data consisting of primary, secondary, and tertiary legal materials obtained through library research and does not recognize field research.

This research is descriptive analytical in nature which aims to explain specifically about the Prohibition of Social Business Transaction Practices of E-Commerce Tiktok Shop Based on Permendag No. 31 of 2023 concerning Business Licensing, Advertising, Guidance, and Supervision of Business Actors in Trading Through Electronic Systems. The problem that exists is by prohibiting social e-commerce transactions on the TikTok social media platform because based on Permendag No. 31 of 2023, Article 21 Paragraph 3 states that PPMSE with a social commerce business model is prohibited from facilitating payment transactions on its electronic system.

The approach used in this study is the statute approach and the conceptual approach. The statute approach is a study that prioritizes legal materials in the form of statutory regulations as basic reference materials in conducting research. The statute approach is usually used to examine statutory regulations that still have shortcomings in their norms or even foster deviant practices both in technical terms or in their implementation in the field. This approach is carried out by examining all statutory regulations related to business law, especially regarding e-commerce social business transactions in the tiktokshop application.

The conceptual approach is an approach that starts from the views and doctrines that develop in legal science. By studying the views of doctrines in legal science, researchers will find ideas that give birth to legal understandings, legal concepts and legal principles that are relevant to the issues at hand. The approach is used to examine and conduct a study of legal concepts or ideas regarding the regulation of the prohibition of social e-commerce business transactions in the Tiktokshop application based on Permendag No. 31 of 2023.

The data used in this study are secondary data consisting of laws and regulations as primary legal materials. Furthermore, secondary legal materials include library sources such as books, scientific articles, and journals consisting of primary, secondary, and tertiary sources. The data used in this study were collected using the library research method. The library research method is a research conducted by reading books or magazines with other data sources in the library. This research activity is carried out by collecting data from various literatures, which are used not only limited to books, but can also be in the form of documentation materials, magazines, newspapers, and others.

RESULTS AND DISCUSSION

Analysis of Trade Transaction Practices Through Electronic Systems (PMSE) Before Permendag No. 31 of 2023

In mid-2023, the government of the Republic of Indonesia stipulated Regulation of the Minister of Trade Number 31 of 2023 concerning Business Licensing, Advertising, Development, and Supervision of Business Actors in Trading through Electronic Systems. This regulation is considered an improvement of Regulation of the Minister of Trade Number 50 of 2020 concerning Provisions on Business Licensing, Advertising, Development, and Supervision of Business Actors in Trading through Electronic Systems that previously existed. The purpose of this policy is to create equal and fair rules for e-commerce in Indonesia. In this regulation, it is explained that social media is prohibited from playing a dual role as e-commerce. Social media can only promote goods, without making transactions in the application.

The regulation is explained in the Regulation of the Minister of Trade Number 31 of 2023 concerning Business Licenses, Advertising, Supervision, and Development of Business Actors in Trading Through Electronic Systems. Article 21 Paragraph (1) states that in conducting Trading Through Electronic Systems (PMSE), Business Actors are required to comply with the provisions of laws and regulations related to business licensing, 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) emphasizes that "Organizers of Trading Through Electronic Systems (PPMSE) with a social commerce business model are prohibited from facilitating payment transactions in their Electronic Systems".

Regulation of the Minister of Trade (Permendag) Number 31 of 2023 is a new regulation issued by the Minister of Trade, Zulkifli Hasan, which aims to create an e-commerce ecosystem that runs fairly, healthily, and provides beneficial benefits by paying attention to the welfare of the community. Purpose. This regulation includes defining various business models in digital commerce, such as marketplaces and social commerce, as well as regulations relating to licensing, taxation, and other trade provisions to ensure that the operation of the digital platform runs optimally. In addition, this regulation also focuses on enforcing policies that ensure that digital transactions are carried out transparently and fairly, so that they can encourage balanced and sustainable digital economic growth in Indonesia. The growth of technological developments that are always developing. This Permendag also aims to support the empowerment of micro, small, and medium enterprises (MSMEs) and business actors in trade through domestic electronic systems (PMSE) and to improve consumer protection. Regulation of the Minister of Trade (Permendag) Number 31 of 2023 regulates Business Licensing, Advertising, Guidance, and Supervision of Business Actors in Trade through Electronic Systems.

This Regulation of the Minister of Trade also aims to support micro, small and medium enterprises (MSMEs) and business entities that operate commercially through electronic systems (PMSE) domestically, while further strengthening consumer protection. With the Regulation of the Minister of Home Affairs Number 31 of 2023, it is hoped that it can improve the quality of trade through electronic systems and better protect consumers, as well as encourage the development of the MSME sector in Indonesia.

The legal uncertainty related to the TikTok Shop phenomenon that was reopened by ignoring the provisions of the Minister of Trade Regulation Number 31 of 2023 concerning Business Licensing, Advertising, Development, and Supervision of Business Actors in Trading through Electronic Systems has not yet provided a clear point on how the government will act regarding social commerce in Indonesia. Therefore, this issue is very interesting to investigate further. This study discusses the legal certainty regarding social commerce in Indonesia as well as the protection of personal data of social commerce users in Indonesia.

Legal certainty requires efforts to regulate law in laws and regulations made by the authorities so that the rules have a legal aspect that can guarantee that the rules must be obeyed. The law must apply firmly in society and contain openness so that everyone can properly interpret a legal provision. The law must not contradict existing laws so that it does not arisedoubts about its implementation. The current situation raises the issue of legal uncertainty because TikTok Shop has been reopened, the Ministry of Trade as a representative of the government believes that it is okay for TikTok Shop to be reopened, but it is given a trial period to adapt to the Regulation of the Minister of Trade Number 31 of 2023 concerning Business Licensing, Advertising, Development, and Supervision of Business Actors in Trade through Electronic Systems with the hope that TikTok Shop can increase local MSMEs where now those that have merged with Tokopedia only contain local MSME products. But on the other hand, there is a strong reason that TikTok Shop still needs to be closed and prohibited from operating in Indonesia because there is still a discrepancy between TikTok Shop and the Regulation of the Minister of Trade

Number 31 of 2023 concerning Business Licensing, Advertising, Development, and Supervision of Business Actors in Trade through Electronic Systems. Where the platform should have adjusted to existing regulations, TikTok Shop must first comply with existing regulations before it can start operating again in Indonesia.

Prohibition on Combining Social Commerce and E-Commerce Practices in One Social Media Platform Based on Regulations in Indonesia

Based on the Regulation of the Minister of Trade of the Republic of Indonesia Number 31 of 2023 concerning Business Licensing, Advertising, Development, and Supervision of Business Actors in Electronic Trading based on Article 21 number 3, Electronic Trading Organizers (PPMSE) with a Social Commerce business model are prohibited from Facilitating Payment Transactions on their Electronic Systems. The prohibition on social commerce that carries out online transactions at once on one platform in Indonesia is related to efforts to prevent potential monopolies.

There should not be two shopping functions on one platform with social media, this must be separated because this is related to licensing and supervision issues, preventing unfair business competition, preventing predatory pricing, in some cases, social commerce platforms that have strong market dominance can take advantage of their position to control prices, reduce competition, and hinder the growth of small and medium businesses. By prohibiting social commerce from carrying out online transactions at once on one platform. The prohibition on direct transactions on social commerce aims to prevent control of algorithms to protect personal data from business interests. All platforms that provide direct transactions are prohibited because they can create unfair business competition, especially the TikTok Shop platform can use user information to control the algorithm on TikTok Shop, user data without permission is used for marketing and sales purposes, this can lead to market control and result in potential monopolistic practices. The government is trying to encourage healthy and fair competition in the e-commerce market. This provides an opportunity for small and medium businesses to compete fairly and provide wider choices for consumers

Initially, TikTok was only used for social media applications that were oriented towards short video platforms. However, TikTok has gradually developed with other features, one of which is the TikTok Shop. Many people are interested in the TikTok Shop because there are various promos and interesting items because they are packaged with creative photos or videos. In addition, TikTok Shop provides a live shopping feature where in this feature, traders and consumers can interact directly via live streaming video. With the live streaming feature, consumers can see products in detail because consumers can also use the comment feature as an intermediary to ask about, among others, the size, type of material used in related products, and so on.

Before Indonesia adopted this policy regarding TikTok Shop, transactions through TikTok were specifically regulated in the TikTok Shop business transaction guidelines. These guidelines in Indonesian positive law are included in the category of standard agreements with coverage related to the terms and conditions of transactions with TikTok Shop. A standard agreement is an agreement in which the organizer first regulates the clauses. The guidelines also cover what products can be traded on TikTok Shop. If a business actor trades prohibited products, they will be subject to law enforcement. Business actors are required to comply with these guidelines because these guidelines contain binding clauses like agreements for business actors.

Legal Certainty Analysis of TikTok's Practice of Combining Social Commerce and E-Commerce in One Social Media Platform Based on Trade Ministerial Regulation No. 31 of 2023

Violation of PMSE committed by TikTok. As we know that TikTok Shop has a permit as an Electronic System Organizer (PSE) issued by the Ministry of Communication and Information in the form of social media, and the second is related to TikTok Shop's permit as a social commerce issued by the Ministry of Trade. This permit is a permit to carry out promotional activities or advertising of goods to be sold and is not allowed to make trade payments or conduct trade transactions. However, TikTok adheres to the PMSE (Trading Through Electronic Systems) mechanism which is not in accordance with Permendag No. 31 of 2023 and creates a problem that must be resolved by complying with and changing the system that has been adopted. Permendag No. 31 of 2023 is the result of a revision of the previous regulation, namely Permendag No. 50 of 2020, this is done because there is a circulation of goods on the Trading Through Electronic Systems (PMSE) platform that does not meet existing standards and has the potential to interfere with the use of data and information obtained from social media if not regulated clearly, therefore this system is prohibited. In addition, the consumer protection issues explained in (TikTok Shop Ethics Journal case) are not guaranteed, such as the risk of fraud with the circulation of confirmation

links via chat applications that end in phishing or theft of personal data, even using undetected shipping receipt numbers.

Analysis of the causes of legal uncertainty that creates uncertainty in individuals or businesses. The occurrence of this legal ambiguity creates the potential for violations. It can be seen in the Minister of Trade Regulation before the revision, namely Minister of Trade Regulation No. 50 of 2020 concerning Provisions on Business Licensing, Advertising, Guidance and Supervision of Business Actors in PMSE, it is not explained in detail how the social commerce system is allowed and legal to be carried out by a social media platform. This is also reinforced by the assumption of the influence of social and technological changes from conventional buying and selling culture to modern buying and selling culture (online). Before the revision, the legal clarity regarding the rules for merging with the social commerce system was unclear, which ultimately freed traders to continue to carry out illegal trade that was detrimental to MSMEs and the Government.

A weak legal system can lead to lax supervision by TikTok and the government. Member of Commission VI of the House of Representatives, Amin A. K, argued that one of the violations of TikTok Shop was the negligence of the Ministry of Trade in carrying out supervision, and he suspected that there was a conspiracy between the Ministry of Trade and TikTok because they seemed to allow violations to occur even though there were regulations discussing this matter. The lack of resources and infrastructure and government initiatives in supervising e-commerce platforms makes the supervision process unsafe because it is difficult to track and take action against violations, resulting in illegal buying and selling practices on the TikTok Shop social media platform. Gustav Radbruch also explained that legal certainty is one of the goals of the law itself. Gustav Radbruch explained¹ that in the theory of legal certainty that he put forward there are four basic things that have a close relationship with the meaning of legal certainty itself, namely as follows:

1. Law is a positive thing, which means that positive law is legislation.
2. Law is based on a fact, meaning that the law is made based on reality.
3. Facts contained or stated in the law must be formulated in a clear manner, so as to avoid errors in meaning or interpretation and can be easily implemented.
4. Positive laws must not be easily changed.

Gustav Radbruch's opinion on legal certainty is based on his view on legal certainty which means legal certainty itself. Gustav Radbruch stated that legal certainty is one of the products of law or more specifically is a product of legislation. Based on the opinion of Gustav Radbruch regarding legal certainty, law is a positive thing that is able to regulate the interests of every human being in society and must always be obeyed even though the positive law is considered unfair. Furthermore, legal certainty is a definite condition, provision or stipulation. In essence, law must be definite and fair. This means that definite law is a guideline for behavior and fair is a guideline for behavior that must support an order and is considered reasonable. Only by being definite and fair, the law is carried out according to its function.

However, on the other hand, there are still social commerce platforms that still violate the Regulation of the Minister of Trade Number 31 of 2023, namely Tiktok Shop, where this platform is one of the reasons for the formation of the regulation. This began when the Minister of Trade Zulkifli Hasan said, "Social commerce can only facilitate the promotion of goods or services, not direct transactions, direct payments, nothing more, it can only promote," said Zulkifli Hasan. (09/25/2023). He also analogized the social commerce platform to television, namely it can be used to promote goods or services, but not for transactions. "(Social commerce) cannot sell, cannot receive money, so it is a kind of digital platform, its role is to promote," he said.

The return of the additional TikTok Shop feature on the TikTok application is now managed and operated by Tokopedia. The enactment of Permendag Number 31 of 2023 is considered inappropriate and seems rushed because TikTok Shop, which was closed on October 4, 2023, can now run as usual by collaborating with Tokopedia, which has a marketplace permit that is still included in the same application. In addition, TikTok's merger with the e-commerce platform, Tokopedia, and this is also what allowed TikTok Shop to operate again. Looking at this case, the government should make regulations related to the two PPMSEs that merge into one digital trading platform. This is because in its business competition, this kind of platform clearly gets more benefits than other digital trading platforms.

Since December 2023, TikTok Shop has been reopened because it is considered to have met the provisions of the Minister of Trade Regulation Number 31 of 2023. However, in practice, there are still violations committed by TikTok Shop, namely still facilitating payment transactions in it, even though the payment process for goods is written "Processed by Tokopedia", which is an e-commerce. However, this clearly violates Article 21 paragraph 3 which reads "PPMSE with a social commerce business model to facilitate payment transactions on its electronic

system". So, based on these regulations, TikTok Shop should not combine payment for goods in one application and this creates inequality for other social commerce platforms and is also not in line with Nurhasan Ismail's theory of legal certainty that legal certainty requires an effort to regulate law in laws made by authorized or authoritative parties. So that the rules formed have a juridical aspect and can guarantee the certainty that the law has a function as a regulation that must and must be obeyed by the community or its citizens.

CONCLUSION

Based on the results of the analysis and discussion in the previous chapters, the following conclusions are formulated as answers to the formulation of the research problems:

1. Before the Regulation of the Minister of Trade No. 31 of 2023, the practice of trade transactions through electronic systems (PMSE), was previously regulated in the Regulation of the Minister of Trade No. 50 of 2020, this Regulation of the Minister of Trade has not regulated the classification of types of business actors in trade through electronic systems and there is no express prohibition for social media organizers to facilitate transactions on their electronic systems. Then in its development, the Ministry of Trade issued a strict regulation to TikTok in the 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 organizers, are prohibited from facilitating payment transactions on electronic systems. TikTok only has a license as a social media, not as a market place, so it must be separated between social media and market place.
2. Based on the results and discussion, a conclusion was obtained. The prohibition on combining e-commerce with social media in the same application is regulated in the 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 organizers, are prohibited from facilitating payment transactions on electronic systems. In this regulation, social commerce must first obtain a permit before being able to operate in Indonesia. This regulation prohibits social media and social commerce from facilitating transactions and payments such as e-commerce. Social commerce is only allowed for promotion or advertising without transactions. In this way, business competition can become healthier. There are at least 4 reasons why Social Media platforms are prohibited from facilitating social commerce and e-commerce, namely, First, a platform can monopolize the market. Second, the platform can manipulate the algorithm. Third, the platform can take advantage of traffic. Fourth, data protection. The separation of social media and social e-commerce transactions is very necessary, one of which is to maintain data security, data misuse will be more difficult if it is divided into two different platforms. In addition, the supervision carried out can also be more optimal because it does not overlap, not only that, a platform also cannot use its social media algorithm for selling.
3. The results of the legal certainty analysis in the Tiktok Shop incident that combines social commerce and e-commerce in one social media platform based on Permendag No. 31 of 2023 are that it creates legal uncertainty. The results of the analysis with the emergence of legal uncertainty in the Tiktok Shop incident that combines social commerce and e-commerce in one social media platform are, First, the business operations carried out by Tiktokshop are contrary to the Regulation of the Minister of Trade Number 31 of 2023, which prohibits the combination of social commerce with e-commerce. Second, with the reopening of Tiktokshop, it has again invited public controversy because in fact after Tiktokshop resumed operations, there were no significant changes to the previous Tiktokshop, such as with social e-commerce transactions still being carried out on the Tiktok social media application itself where consumers can easily make social e-commerce transactions and make payments on the application. Third, there is an indication of legal uncertainty. The government at one time banned the Tiktokshop business practice for various considerations, but in a short time later allowed the business practice again using the same legal regulations as the regulations to prohibit the Tiktokshop business practice.

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