

The Government Role in Trading of E-Commerce

Wilma Laura Sahetapy

Prof Dr. Moch. Bakri, S.H., M.S

Dr. Sihabudin, S.H., M.H

Dr. Bambang Winarni, S.H., M.H

Abstract- The government role in trading of e-commerce will give a good impact on businesses and consumers. Government has a role to organize and provide protection against e-commerce trading through taxation. The tax determination is necessary because it can provide legal protection in terms of trade. The purpose of this study was to determine the role of the government in this regard is the tax assessment, can provide legal certainty to create consumer protection. The results of this research indicate that the tax assessment has relation with e-commerce trade.

Index Terms— E-commerce, consumer, seller, entrepreneur, government, legal protection.

I. INTRODUCTION

Starting from the first barter system is an ancient method (to exchange their services and goods) developed into money as a means of payment in commercial transactions. Both systems are referred to as conventional trade. The development era to the era of globalization is very rapid impact for the development of trade. It raised of trade through electronic media. Although the current trade conventional existing trade in their transactions the seller and buyer meet directly but some conventional businesses began to move into this model of electronic media as a service sale of goods or services.

The trade development using information technology is characterized by the presence of the Internet. Modern trading via the Internet is finally growing into a trend in society especially with the support of easy internet access everywhere such as the buying and selling or trading through electronic media such as websites and social networks, facebook, blackberry. Trading through the electronic media offer a variety of goods or services and extended to all aspects of life. Through the electronic media people can act directly as a seller to upload photos of the goods / services sold / offered no certain place to go and move. The Trade of electronic transactions in the English language commonly referred to as Electronic Commerce or abbreviated to e-commerce.

Opinions on the definition of e-commerce expressed by Kalakota and Whinston, namely:¹

a. A communication and information delivery activities, products / services, or payments made via telephone, computer networks or other electronic means;

b. Can be a business process by applying technology to conduct business transactions or workflows (workflows);

¹ Kalakota & Whinston, *Frontiers of Electronic Commerce*, (Massachusetts: Addison – Wesley Publishing Company Inc, 1996), hlm. 10-22

c. As a service (services), e-commerce is defined as the means by which companies, consumers and corporate management to lower the costs of service;

d. Online, e-commerce is defined as a means of allowing for the sale and purchase of products and information through the Internet and other online services.

E-commerce makes trading more fast-paced, easy, practical, and want better quality². e-commerce is the development of trade transactions of the most interesting and the trade through e-commerce transactions, the concept of the traditional market (buyers and sellers meet physical) and then transformed into the concept of telemarketing that long-distance trade by using the internet.³

Trading activities of e-commerce is a novelty in the field of commerce (e-business) and marketing (e-marketing) for business transactions can be done without meeting in person (face to face) between seller and buyer. E-commerce is also, all the formalities are commonly used in conventional transactions is reduced or eliminated⁴. Here is the view of Abu Bakar Munir, which distinguishes e-commerce from conventional trade⁵:

“There are several features which distinguish electronic commerce from business conducted by tradisional means. In particular: electronic commerce establishes a global marketplace, where traditional geographic boundaries are not only ignored, they are suite simply irrelevant;...”

Easiness that can be found in e-commerce transactions is also comparable with the problems that arise in commercial transactions of e-commerce. Problems in e-commerce transactions is extremely diverse. That is because e-commerce is a new thing in world trade that many aspects of the law for businesses and consumers are still not regulated. In e-commerce trading businesses and consumers are not met in person (face to face) and it has resulted in consumers becoming weaker position than an entrepreneur so that there

² Alinafiah dan Prasetyo, *“Kesiapan Infrastruktur dan Sistem Antarann Tepat Waktu dalam Mendukung E-Commerce”*, (Bandung: makalah pada seminar E-Commerce Revolusi Teknologi Informasi dan Pengaruhnya pada Peta Perdagangan Global, diselenggarakan KM ITB Bandung, 2000).

³ Albarda, *“Sistem Informasi untuk Kegiatan Promosi dan Perdagangan”*, (Bandung: makalah pada seminar Informasi ITB, 1997).

⁴ Abu Bakar Munir, *Cyberlaw: Policies and Challenges*, (Butterworths Asia, 1999) hlm.205-206

⁵ Ibid, Op.cit, hlm. 205-206

was an imbalance in the rights of consumers. Starting from the problem, it is necessary to establish a clear legal to enforce consumer rights as determined in Law Number 8 of 1999 on consumer protection. Determination of the law is meant for consumer protection in e-commerce trading transactions.

II. DISCUSSION

Trade as one of the pillar of the economy so that the government's role is very important especially relating to the management of the national economy. Government intervention in economic development either directly or indirectly, could reduce the market failure. The market mechanism can not function without the presence of a rule made by the government. So the role of government has an important function in economic life because it can participate to control the goods market equilibrium so as to provide comfort to the public and price stability. As a manifestation of the government's role, the enactment of the Law of the Republic of Indonesia Number 7 of 2014 on Trade (State Gazette of the Republic of Indonesia Year 2014 Number 45) is called the Law of Trade.

In accordance with the theory of Keynes that the government must be willing or allowed to conduct an active policy to affect the economy of motion. It shows that all the activities of state-controlled production, which in theory at least, in the public interest above personal interests / groups. As the government's macroeconomic theory has two policies that are used in the control of economic common one in control of the goods market equilibrium is through fiscal policy. Fiscal policy in question is with the holding or the enactment of the tax in the trading system. Conventional trade and modern trade has basically the same principle, namely the sale and purchase transactions therein. But when seen further there are some fundamental differences, which one of them is if conventional trade in selling goods / services are already taxed in the transaction, while the e-commerce trading is not subject to tax on the transaction. The tax assessment is very necessary because e-commerce is of particular than conventional trade. Said to be a special case because of the presence of e-commerce transactions no items to suitability and authenticity of the goods sold are not guaranteed and are not direct physical meeting between the seller to the buyer so that there is no clear identity of the seller because that required special supervision through the establishment of a special tax as well as in e-commerce there is no certainty the identity (name, address) the seller, then in case of disputes or claims of consumer complaints can not be done directly on the settlement of consumer dissatisfaction towards e-commerce transactions. It was done by the Japanese state to regulate taxation of e-commerce in particular through the "Tax Office Online" they founded.

Determination of tax is in addition to a supervision and control can also be a state income Indonesia. As it is known that the tax is 70% donation state funds with the trade of e-commerce can be a potential source of income. If the e-commerce trading is not done soon, the tax determination Indonesia is one country that loses a very large budgetary functions in the trade practices of e-commerce.

The government's role in the determination of trade tax e-commerce is a tool to achieve legal certainty in an e-commerce transactions. Tax according to Soeparman Soemahamidjaja in his dissertation defines as follows: Tax is a mandatory fee, in

the form of money or goods, which is levied by the authorities based on the norms of law, in order to cover the cost of production of goods and services collectively to achieve common prosperity. Departing from that sense, the law also provides for the definition and position outlined in the tax law.

Tax when seen from a legal perspective, it can be defined as the engagement arising from legislation (so by itself), which requires a person meets the requirements set by law to pay a certain amount to the state (public) which can be imposed, with no gain benefits that can directly appointed, which is used to finance state expenditures⁶. Besides the tax through the state budget is used as a national development that aims to improve the welfare of the people.

There are three basic principles that were developed in the taxation of e-commerce transactions, namely:⁷

1. Treatment of taxation for transactions conducted electronically should not be treated differently from transactions conducted electronically not.
2. If the tax regulations currently allow to be applied to e-commerce transactions, then this provision is applied.
3. There is an agreement between the tax regimes of each country in order to avoid double taxation conflict.

In general, agreed principles on conventional trade and taxation, as well as agreed upon by the government and representatives of companies from various countries in the Ottawa conference in October 1998, that the government's tax treatment applied to the conventional trade should be set equal also to e-commerce. The principles are as follows:

1. Neutrality; tax treatment should be neutral or balanced between business e-commerce itself, and between e-commerce with a conventional business. Taxpayers who do business in the same condition should get the same treatment.
2. Efficiency; costs incurred by the taxpayer or by the Tax administration should be minimized.
3. Certainty and simplicity; tax laws must be clear, simple, easy to understand so that taxpayers can easily anticipate the consequences of taxation and its transactions.
4. Flexibility; taxation system must be flexible and dynamic so that it can accommodate the changes caused by technological developments.

The purpose of taxation policy is the same as public policy in general, which has the principal objectives:

1. Improving the welfare and prosperity
2. fairer income distribution, and stability.

Improved well-being through the use of resource tax is collected it for the establishment of public capital expenditure and other countries associated with the development.⁸

⁶ Rochmat Soemitro, *Asas dan Dasar Perpajakan I*, (Bandung, 1992) hlm 51

⁷ Carol A. Dunahoo, *Foreword, fiscal fed actualiteiten, Caught in the Web: the Tax and Legal Implications of Electronic Commerce*, (Deventer: Price Waterhouse, 1998) hlm 5-6

⁸ Mansury, *Kebijakan Perpajakan*, (Jakarta: Yayasan Pengembangan dan Penyebaran Pengetahuan Perpajakan (YP4), 2000), hlm 5.

III. RESEARCH RESULT

In e-commerce trading businesses and consumers are not met in person (face to face) and it has resulted in consumers becoming weaker position than an entrepreneur so that there was an imbalance. The imbalance caused much uncertainty in the transaction, in addition to not meeting the seller and the buyer directly, the location of businesses also unknowable. By not meeting the seller by the buyer directly and does not know the location of businesses in the event of a conflict / complaint in the trade of e-commerce this is not insurmountable and the handling of legal certainty so as to give rise to new legal problems. It happens because the easy way businesses e-commerce trading carries on business without a business license and validity of the identity of businesses. Especially on the internet or social networking, one can make more than one internet page so that it can be easier for a person to commit the crime of fraud by moving the page without being detected. Bawdy bawdy e-commerce trading transactions pose much of a problem so that the role of government is considered very important in the regulation of the law, especially in providing legal certainty, fairness and benefits as much as possible for the benefit of society.

The government's role as a controller in the economic chain indispensable one of which is through the fiscal policies that can be applied in e-commerce trading transactions fiscal ini. The Policies may include the taxation of e-commerce trade transactions. It is one of alternative legal certainty to be able to protect the businesses and people in the trade. The certainty very important law required by operators in maintaining a balance between rights and obligations. The balance between businesses and consumers will make the trade transactions to be balanced, there is no fraud and avoid legal problems. Thus there is a legal vacuum in the trade of e-commerce so that researchers provide an alternative that can be used to fill the legal vacuum. Alternative provided by this study is expected to create legal certainty, fairness and benefits to businesses in e-commerce trade. Alternatives to be raised in this research is a form of government's role in protecting and regulate commerce e-commerce through taxation in commercial transactions of e-commerce.

From the consumer's lack of legal certainty through tax assessment can provide legal protection that consumers identify the location of the business of businesses. The problem of the existence of these businesses are very detrimental to the consumer as the buyer because many sellers on-line store his fictional or virtual stores where its existence was not there or fictitious. With the determination of tax, expected tax authorities as the second party can prove the existence of the seller. The existence of sellers here will be known if the seller has NPWP/ TIN (Taxpayer Identification Number) which will be mentioned in the trade page if the seller has a TIN or not. TIN is a tax administration tool used taxpayer to run a variety of duties in taxation.

Based on the Ministry of Finance of the Republic of Indonesia in this case the tax authorities that issued the Director General of Taxation SE No. 20 / PJ / 2013 on Procedures for Granting Registration and Tax Registration Number, Business Reporting and VAT collector, Elimination Taxpayer Identification Number and Revocation VAT collector, and Change Data and Transfer of Taxpayer. Here is

Article 2, paragraph 1 of the procedure for registration and tax number⁹.

TIN will look a person's identity and address of the seller's business location with a clear and definite in accordance with article 2, paragraph 2, and article 2, paragraph 4 No. 20 / PJ / 2013¹⁰. Inclusion TIN every page of every business will create a consumer to get legal certainty in terms of aspects of identity and location of businesses that transact business. It makes the legal certainty the identity and location of the business of business agents for sure. It can provide a sense of security to consumers so that in case of legal problems can be prosecuted clearly. So If the seller does not have a TIN, it is expected consumers to be careful or it does not make transactions on the page because the absence of the same TIN with unknown whereabouts of the seller.

TIN have a positive impact on both the buyer and seller as well as the government. The positive impact of this is how the purchaser or consumer with more feel secure transactions because in the end it knows that the seller although with only lists TIN. With the existence of this TIN consumer rights in e-commerce trading can be met. As consumer rights in UUPK namely¹¹:

- a) The right to comfort, security and safety in consumption of goods and / or services.
- b) The right to choose the goods and / or services as well as goods and / or services in accordance with the exchange rate and the conditions and guarantees promised.
- c) The right to information is correct, clear and honest about the condition and guarantee of the goods and / or services.
- d) The right to advocacy, protection, and mediation in consumer protection is worth.
- e) The right to receive guidance and consumer education.
- f) The right to be treated or serviced properly and honestly and not discriminatory.
- g) The right to obtain compensation, compensation and / or replacement, if the goods and / or services received are not in accordance with the agreement or not as it should be.

h) The rights set out in the provisions of other legislation. So is the opinion of Abdul Halim Barkatullah revealed that in general can be found several problems that arise with regard to the rights of consumers in e-commerce transactions, among others¹²:

- a. Consumers can not directly identify, view, or touch the items to be ordered;
- b. Vagueness of information about the products offered and / or there is no certainty whether the consumer has obtained adequate information known, or which was duly required to take a decision in the transaction;

⁹ Pasal 2 ayat 1 SE Nomor 20/PJ/2013 : Wajib Pajak yang telah memenuhi persyaratan subjektif dan objektif sesuai dengan ketentuan peraturan perundang-undangan di bidang perpajakan, wajib mendaftarkan diri pada KPP yang wilayah kerjanya meliputi tempat tinggal atau tempat kedudukan, dan tempat kegiatan usaha Wajib Pajak, dan kepada Wajib Pajak diberikan Nomor Pokok Wajib Pajak

¹⁰ Pasal 2 ayat 2 SE Nomor 20/PJ/2013

¹¹ Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen, Pasal 4

¹² Abdul halim barkatullah, hlm.261-262

- c. Lack of clarity on the legal status of the subject, from businesses;
- d. There is no guarantee of transaction security and privacy as well as an explanation of the risks relating to the system used, particularly in the case of electronic payment either by credit card or electronic cash;
- e. Imposition of unequal risks, as most of the buying and selling on the internet, payment in full has been made in advance by the consumer, while not necessarily the goods received or will follow later, as a guarantee that there is not a guarantee of item receipt of goods;
- f. Cross-border transactions that are borderless country, raises questions about the legal jurisdiction of the state where the duly enacted.

Determination of tax as a form of identity ratification can provide legal certainty in e-commerce business activities so weak consumer rights can be met with the tax assessment.

Legal certainty provided by TIN is not just until it alone. The TIN can be used as a Trust Mark on every page of e-commerce trade. Mark then glued to the pages of the business people have a connection / server link dengan tax authorities that provide information on the identity and location of the business truth businesses so that the consumer before the transaction can confirm the truth of the identity and location of the business of businesses by clicking Then Mark TIN-Click the logo. In addition, the Government should open a special complaint service e-commerce transactions so that every page is problematic to blocking of the Trus Mark stuck to its website. With the blocking TIN Then Mark and consumers will feel safe before the transaction and provide a deterrent effect on businesses problematic due to open a business again they

must register a new TIN and it could not happen because the TIN registration can only be done with a single ID card.

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