



A MODEL FOR THE FUNCTIONAL HARMONIZATION OF MARKETPLACE RESPONSIBILITIES IN DIGITAL CONSUMER PROTECTION FOLLOWING THE 2024 AMENDMENTS TO THE ITE LAW

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Abstract

The development of electronic commerce has positioned marketplaces as central actors in Indonesia's digital economy. Marketplaces no longer operate merely as passive intermediaries between sellers and consumers but also function as trade facilitators, Electronic System Providers, and Personal Data Controllers. Legal issues arise because marketplace liability remains dispersed across several regulatory regimes, including the Consumer Protection Law, the Electronic Information and Transactions Law, the Personal Data Protection Law, and implementing regulations on electronic system operation and electronic commerce. This study aims to analyze the legal liability of marketplaces, identify forms of regulatory disharmony, and formulate an ideal harmonization model for digital consumer protection. This research uses normative legal methods with statutory, conceptual, and comparative approaches. The findings show that disharmony in marketplace liability occurs in four main forms: disharmony in determining the liable legal subject, the basis of liability, the scope of responsibility, and dispute resolution mechanisms. This study proposes a Functional Harmonization Model of Marketplace Liability, which allocates responsibility based on the marketplace's functions as a trade facilitator, Electronic System Provider, and Personal Data Controller. This model is expected to strengthen legal certainty and digital consumer protection in Indonesia.

Keywords: marketplace, digital consumer protection, legal harmonization, legal liability, EIT Law

INTRODUCTION

Advances in information technology have transformed the legal framework governing commercial activities. Transactions that were previously conducted in person are now largely carried out through electronic systems, with marketplaces serving as the primary platform for bringing together businesses and consumers. In practice, marketplaces not only provide a digital space for transactions but also manage product information, payment systems, user accounts, consumer complaints, search algorithms, and users' personal data. Therefore, it is no longer appropriate to view marketplaces merely as passive intermediaries.

The growth of digital transactions offers convenience to consumers, but at the same time gives rise to new legal risks. These risks include misleading product information, non-conforming goods, online fraud, electronic system failures, account misuse, and personal data breaches. In digital legal relationships, consumers are often in a weaker position because they rely on information and systems controlled by marketplaces. This reliance underscores the urgent need for clearer legal protections, particularly regarding who is liable when consumers suffer losses.

Normatively, regulations on digital consumer protection in Indonesia are still scattered across several legal frameworks. Law No. 8 of 1999 on Consumer Protection designates business entities as the primary parties responsible for consumer losses. Law No. 1 of 2024 on the Second Amendment to the Law on Information and Electronic Transactions designates marketplaces as Electronic System Operators that are required to operate their systems reliably, securely, and responsibly. Law No. 27 of 2022 on Personal Data Protection designates marketplaces as Personal Data Controllers if they determine the purposes of and exercise control over the processing of users' personal data.

These differing regulatory focuses create disharmony. The UUPK focuses on the relationship between businesses and consumers, the UU ITE focuses on the reliability of electronic systems, while the UU PDP focuses on the protection of personal data. In a single incident of digital consumer harm, all three legal frameworks may

apply simultaneously, yet they do not provide a clear division of liability. As a result, consumers may face difficulties in determining which party to hold accountable, the applicable legal basis, and the most appropriate forum for dispute resolution. The novelty of this research lies in the formulation of the Functional Harmonization Model of Marketplace Responsibilities. This model does not merely state the need for harmonization among regulations but offers a method for allocating responsibility based on the marketplace's functions within the digital ecosystem—namely, its roles as a trade facilitator, an Electronic System Operator, and a Personal Data Controller. With this approach, each legal regime can continue to operate complementarily without causing overlapping responsibilities.

Based on the above discussion, this study addresses three issues: first, how legal liability for marketplaces is regulated in the context of digital consumer protection following the 2024 amendment to the ITE Law; second, the nature of the regulatory inconsistencies regarding marketplace liability under the UUPK, the ITE Law, and the PDP Law; and third, what constitutes an ideal regulatory harmonization model to strengthen digital consumer protection in Indonesia

METHOD

This study is a normative legal study. A normative legal study was chosen because the focus of the research lies on the analysis of legal norms, legal principles, legal doctrines, and the harmonization of laws and regulations governing the responsibilities of online marketplaces in the protection of digital consumers. The approaches used include a legislative approach, a conceptual approach, and a comparative approach. The legislative approach was used to examine the Consumer Protection Law (UUPK), the Electronic Information and Transactions Law (UU ITE), the Personal Data Protection Law (UU PDP), Government Regulation No. 71 of 2019, Government Regulation No. 80 of 2019, and Minister of Trade Regulation No. 31 of 2023. The conceptual approach was used to analyze the concepts of digital consumer protection, legal liability, marketplaces, Electronic System Operators, and Personal Data Controllers. The comparative approach was used to a limited extent by examining the development of digital platform regulations in international instruments such as the OECD Recommendation on Consumer Protection in E-Commerce, the ASEAN Guidelines on Consumer Protection in E-Commerce, and the EU Digital Services Act.

The legal sources used consist of primary legal sources, such as laws and regulations, and secondary legal sources, such as books, academic journals, institutional reports, and relevant academic articles. The analysis was conducted qualitatively through grammatical, systematic, and teleological interpretations, as well as through a legal harmonization approach to identify the alignment between consumer protection, electronic transactions, and personal data protection regimes.

RESULTS AND DISCUSSION

A. Regulations on the Legal Liability of Marketplaces in Digital Consumer Protection

1. Marketplace Liability from the Perspective of the UUPK

The Consumer Protection Law (UUPK) serves as the general framework for consumer protection in Indonesia. The UUPK defines consumer protection as all efforts that ensure legal certainty to provide protection to consumers. Under the UUPK, business entities are the primary parties required to act in good faith, provide accurate, clear, and honest information, and provide compensation if consumers suffer losses due to goods and/or services sold. Article 19 of the Consumer Protection Law stipulates that business operators are responsible for providing compensation for damage, contamination, and/or losses suffered by consumers as a result of goods and/or services produced or sold. Compensation may take the form of a refund, replacement with goods and/or services of the same type or equivalent value, medical care, and/or financial assistance.

However, the UUPK does not yet explicitly regulate marketplaces as separate legal entities. When the UUPK was enacted, digital commerce had not yet developed to its current extent. Therefore, the UUPK still largely reflects conventional relationships between businesses and consumers. In transactions conducted through marketplaces, the legal relationship involves not only the seller and the buyer, but also the marketplace as the system provider, information manager, and transaction facilitator. Thus, the UUPK remains relevant as the basis for consumer protection, but it is not sufficient to define the limits of a marketplace's liability in digital transactions. Primary liability for goods and/or services remains with the seller. However, if a marketplace controls information, transaction mechanisms, payment systems, or consumer complaints, then the marketplace must be regarded as a party that also bears certain legal obligations toward consumers.

2. Marketplace Liability from the Perspective of the ITE Law

The ITE Law views marketplaces from the perspective of electronic system operation. Marketplaces can be classified as Electronic System Operators because they provide, manage, and operate electronic systems used for digital transactions. Article 15 of the ITE Law stipulates that every Electronic System Operator is required to operate electronic systems in a reliable, secure, and responsible manner.

The liability of marketplaces under the ITE Law does not primarily concern the quality of goods or services, but rather the security and reliability of electronic systems. If consumers suffer losses due to system failures, security breaches, account misuse, malfunctioning payment features, or inadequate complaint mechanisms, the marketplace may be held liable as an Electronic System Operator.

The second amendment to the ITE Law through Law No. 1 of 2024 reinforces the direction toward a safer and more accountable digital space. However, the ITE Law has not yet clearly distinguished between the responsibilities of marketplaces as Electronic System Operators and those of sellers as business entities. In practice, consumer harm often results from a combination of sellers' actions and the marketplace's system design. This situation creates room for interpretation that can undermine legal certainty.

3. Marketplace Responsibilities from the Perspective of the Personal Data Protection Act

The PDP Law broadens the scope of marketplaces' responsibilities because personal data is an essential part of digital transactions. Marketplaces collect and process user data, such as names, addresses, phone numbers, email addresses, payment information, shipping addresses, and transaction histories. Under these circumstances, a marketplace may be considered a Personal Data Controller if it determines the purposes of and exercises control over the processing of user data.

As a Personal Data Controller, the marketplace is required to process data in a limited, specific, lawful, transparent, accurate, and accountable manner. Marketplaces are also required to safeguard personal data against unauthorized access, disclosure, alteration, misuse, destruction, or loss. In the event of a personal data breach, marketplaces must notify the data subjects and the relevant authorities in accordance with the provisions of the Personal Data Protection Act.

Thus, the marketplace's responsibility for digital consumer protection extends not only to goods, services, and electronic systems, but also to the protection of personal data. Consumer losses resulting from data breaches, identity theft, account misuse, or data processing without a valid legal basis must be addressed within the framework of the marketplace's responsibility as a Personal Data Controller.

4. Marketplace Responsibilities Under the PSTE Regulation and the PMSE Regulation

Government Regulation No. 71 of 2019 clarifies the obligations of Electronic System Operators to operate their systems in a reliable, secure, and responsible manner. As a private-sector Electronic System Operator (PSE), a marketplace is required to maintain the confidentiality, integrity, authenticity, accessibility, and traceability of the electronic information it manages. The PSTE Regulation also stipulates that a PSE is liable for the operation of its electronic system, unless it can prove that any loss was not caused by its error or negligence.

Meanwhile, Government Regulation No. 80 of 2019 governs Electronic Commerce. The PMSE Regulation requires business operators to provide accurate, clear, and complete information regarding the business operator's identity, goods and/or services, prices, payment, delivery, and complaint procedures. The PMSE Regulation also recognizes the existence of intermediary service providers, including marketplaces, which are obligated to provide communication channels, retain transaction records, provide complaint mechanisms, and assist in dispute resolution. Both of these government regulations indicate that marketplaces bear operational responsibilities within the digital commerce ecosystem. However, neither fully addresses the extent of a marketplace's liability for sellers' actions or consumer losses resulting from a combination of seller errors and weaknesses in platform governance

B. Forms of Disharmony in the Regulation of Marketplace Responsibilities

Disharmony in the regulation of marketplace responsibilities does not always take the form of direct conflicts between norms. Disharmony can also take the form of overlaps, gaps in technical regulations, conceptual inconsistencies, and uncertainty regarding dispute resolution forums. This study identified four main forms of disharmony.

1. Inconsistencies in Determining the Legally Responsible Party

The UUPK holds business operators liable for consumer losses. The ITE Law holds Electronic System Operators liable for the reliability and security of the system. The PDP Law holds Personal Data Controllers liable for the processing and protection of personal data. The PMSE Government Regulation designates marketplaces as intermediaries with administrative obligations in digital transactions.

These differences raise questions about who should be held liable when consumers suffer losses. If the goods do not meet specifications, the seller may be held liable. If the payment system fails, the marketplace, as a Payment Service Provider (PSE), may be held liable. If personal data is leaked, the marketplace, as a Personal Data Controller, may be held liable. However, in practice, situations often arise that cannot be clearly separate for example, account misuse resulting from weak security systems, which is then used for fraudulent transactions. In such cases, the line of responsibility between the seller and the marketplace becomes blurred.

2. Fundamental Discrepancy in Legal Liability

The basis for liability under the Consumer Protection Law focuses on consumer losses resulting from goods and/or services. The Electronic Information and Transactions Law focuses on liability for the operation of electronic systems. The Personal Data Protection Law focuses on liability for the processing and protection of personal data. The Government Regulation on Electronic Commerce focuses on the governance of electronic commerce.

These fundamental differences in liability mean that a single incident of harm can be interpreted under multiple legal frameworks simultaneously. Consumers who suffer harm due to account misuse, for example, may rely on the Consumer Protection Law, the Electronic Information and Transactions Law, or the Personal Data Protection Law, depending on how the incident is framed. This lack of clarity regarding the legal basis can undermine the effectiveness of consumer rights remedies.

3. Discrepancies in the Scope of Responsibilities

The UUPK does not yet provide detailed regulations regarding the responsibilities of marketplaces as digital platforms. The ITE Law does not yet explicitly regulate the responsibilities of marketplaces regarding product information displayed by sellers. The PDP Law regulates responsibilities regarding personal data, but does not address the relationship between personal data and the compensation of consumer losses in commercial transactions directly. The PMSE Government Regulation sets out the obligations of marketplaces as intermediaries, but does not yet explicitly specify when marketplaces are required to provide direct compensation to consumers.

As a result, the scope of marketplaces' responsibilities remains sector-specific and fragmented. In practice, however, the functions of a marketplace are integrated. Marketplaces regulate seller access, display product information, provide payment features, manage complaints, control data, and determine the design of the transaction system. Therefore, sector-specific regulations are insufficient to address the complexity of marketplaces' responsibilities within the digital ecosystem.

4. Inconsistencies in Dispute Resolution Mechanisms

The UUPK provides mechanisms for dispute resolution through the courts or consumer dispute resolution bodies. The UU ITE provides a framework for resolving disputes related to electronic transactions and the misuse of electronic systems. The UU PDP provides mechanisms for filing complaints and enforcing the rights of personal data subjects. The PP PMSE encourages the provision of complaint and dispute resolution mechanisms in digital commerce. These differences in mechanisms can be confusing for consumers. Consumers must determine whether their dispute is a consumer dispute, an electronic transaction dispute, or a personal data dispute. In many cases, however, all three aspects are present simultaneously. Therefore, a more integrated dispute resolution mechanism is needed so that consumers are not burdened by the complexity of choosing a forum.

C. Comparison with International Regulations

International developments indicate a trend toward strengthening the accountability of digital platforms. The OECD Recommendation on Consumer Protection in E-Commerce emphasizes the importance of consumer protection in online transactions through transparent information, fair business practices, effective complaint mechanisms, and the protection of consumer payments and data. The ASEAN Guidelines on Consumer Protection in E-Commerce also emphasize the importance of strengthening consumer protection in cross-platform transactions, including the need for transparency of information, complaint mechanisms, and the responsibilities of digital businesses. The ASEAN Guidelines indicate that the growth of marketplaces in the Southeast Asian region must be

accompanied by consumer protection measures that are adaptable to digital risks. The EU Digital Services Act provides a more advanced example of regulating platform liability. The DSA does not treat platforms as merely passive intermediaries, but imposes obligations regarding due diligence, transparency, handling of illegal content or products, traceability of merchants, and complaint mechanisms. This model demonstrates that modern regulations tend to assess platform liability based on the platform's functions and the extent of its control over the digital ecosystem.

This comparison reinforces the argument that Indonesia needs to develop a functional harmonization approach. Marketplaces do not necessarily have to be held responsible for all actions taken by sellers, but they must be held responsible for those aspects that fall within their functions, control, and authority. Thus, the liability of marketplaces can be established in a proportionate manner, not excessive while still providing effective protection for consumers.

D. A Model for the Functional Harmonization of Marketplace Responsibilities

This study proposes the Functional Harmonization Model of Marketplace Liability as an ideal concept for regulatory harmonization. This model is based on the fact that marketplaces perform multiple legal functions simultaneously. Therefore, marketplace liability must be allocated according to the functions they perform.

1. Marketplaces as Trade Facilitators

In its role as a trade facilitator, a marketplace is responsible for providing a transparent and fair transaction platform. This responsibility includes providing accurate information, clearly identifying sellers, establishing complaint mechanisms, retaining transaction records, and supporting the enforcement of consumer rights. The legal basis for this can be found in the UUPK and the PP PMSE.

In this context, the marketplace is not always liable for product defects that are entirely caused by the seller. However, the marketplace is liable if the consumer suffers losses because the marketplace failed to verify information, allowed misleading information to remain, did not provide an effective complaint mechanism, or made certain guarantees that were subsequently not fulfilled.

2. Marketplaces as Electronic System Operators

In its capacity as an Electronic System Operator, the marketplace is responsible for the security, reliability, and continuity of the electronic system. These responsibilities include account protection, transaction security, the reliability of payment features, the integrity of electronic information, and service restoration in the event of a system disruption. The legal basis for these responsibilities can be found in the ITE Law and the PSTE Government Regulation. Under this provision, the marketplace is liable for any losses incurred by consumers as a result of system failures within the marketplace's control. Examples include payment system disruptions, account security vulnerabilities, loss of transaction data, or malfunctioning complaint features.

3. Marketplaces as Personal Data Controllers

In its capacity as a Personal Data Controller, the marketplace is responsible for the processing and protection of users' personal data. This responsibility includes ensuring that data is processed lawfully, transparently, in a limited manner, accurately, securely, and in an accountable manner. The marketplace is also required to provide notification in the event of a personal data breach. The legal basis for this is the Personal Data Protection Act. Under this provision, the marketplace is liable in the event of a data breach, data misuse, data processing without a valid legal basis, or a failure to safeguard users' personal data.

E. Formulation of a Harmonization Model

The functional harmonization model can be summarized in the following table:

Marketplace Features	Legal Basis	Scope of Responsibilities	Forms of Responsibility
Trade facilitator	UUPK and PP PMSE	Product information, seller information, complaints, proof of transaction	Information corrections, assistance with complaints, restoration of consumer rights
Electronic System Operator	UU ITE and PP PSTE	System security, service reliability, accounts, payment features	System repairs, restoration of access, liability for system failures
Personal Data Controller	UU PDP	Data processing, data security, data breach notifications	Suspension of processing, data deletion, notification, and compensation in accordance with the provisions

This model avoids two extremes. First, marketplaces cannot completely absolve themselves of liability on the grounds that they are merely intermediaries. Second, marketplaces are not required to bear full responsibility for sellers' errors if those errors fall outside the marketplace's functions and control. Thus, this model establishes a proportional and rational allocation of liability that provides legal certainty.

CONCLUSION

The regulation of marketplace liability in digital consumer protection in Indonesia remains sectoral. The Consumer Protection Law places business actors as the primary subjects responsible for consumer losses. The Electronic Information and Transactions Law positions marketplaces as Electronic System Operators that are required to ensure the reliability and security of their systems. The Personal Data Protection Law classifies marketplaces as Personal Data Controllers when they determine the purposes and control the processing of personal data. The Government Regulations on Electronic Commerce and Electronic System Operation establish operational obligations but have not yet fully integrated marketplace liability into a comprehensive legal framework. The disharmony in the regulation of marketplace liability occurs in four forms, namely the disharmony in determining the responsible legal subject, the disharmony in the basis of legal liability, the disharmony in the scope of liability, and the disharmony in dispute resolution mechanisms. This disharmony creates legal uncertainty for digital consumers because consumers cannot always easily determine the responsible party, the applicable legal basis, and the appropriate dispute resolution forum.

The Functional Harmonization Model of Marketplace Liability is a concept proposed to address this issue. This model divides marketplace liability based on the functions it performs, namely as a trade facilitator, an Electronic System Operator, and a Personal Data Controller. Through this model, the Consumer Protection Law, the Electronic Information and Transactions Law, the Personal Data Protection Law, the Government Regulation on Electronic System Operation, and the Government Regulation on Electronic Commerce can continue to apply complementarily without creating overlapping norms. The government should consider this model in the development of normative guidelines or regulatory amendments concerning marketplace liability in digital consumer protection.

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