

CONSTRAINTS AND EXPECTATIONS FOR LEGAL PROTECTION FOR SMES IN THE DIGITAL MARKETPLACE

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ABSTRACT

This paper aims to find out the laws and regulations in Indonesia in overcoming obstacles that cause harm to Micro, Small, and Medium Enterprises in the Marketplace. Some of the obstacles experienced by Micro, Small, and Medium Enterprises actors come from consumers in the Cash on Delivery payment system and from the Marketplace platform, namely deductions from income funds or admin fees. To reach conclusions from the problems in this paper using empirical juridical methods with a qualitative approach by comparing Marketplace regulations in Japan, as well as collecting data on documentation and response studies. The research results show that the problem with consumers is that there are no laws and regulations that specifically regulate the Marketplace for solving problems in the Cash on Delivery payment system. Application of articles 1226 and 1227 of the Civil Code and Government Regulation of the Republic of Indonesia No. 71 of 2019 concerning the Implementation of the Electronic Transaction System, articles 45 and article 46 can be a solution for resolving legal disputes for Micro, Small, and Medium Enterprises actors. As merchants, Micro, Small and Medium Enterprises Actors in the marketplace can demand compensation and consumers who cancel transactions unilaterally get a deterrent effect. Whereas in determining admin fees there are no laws and regulations that specifically regulate the maximum limit that can be set by the marketplace platform for merchants, in this case, Micro, Small and Medium Enterprises actors.

Keywords: marketplace, Micro, Small & Medium Enterprises, regulation

1.0 INTRODUCTION

Micro, Small, and Medium Enterprises (MSMEs) have a strategic role in the Indonesian economy, namely creating new markets and sources of innovation with the development of technology in Indonesia. Information systems and technology have developed rapidly and have had an impact on all aspects of economic life. The need for an information system supported by technology is beginning to be felt by the public, especially those trading in the form of MSMEs to market their products (Daga, Maddatuang, and Wahyuni 2020).

E-commerce in particular platforms Marketplace not only opens new markets for the products and/or services offered, it makes trading easier. Marketplace also makes company operations more efficient (Hendarsyah 2019). MSMEs do not need to have a physical shop. MSME actors can market their products without time and place limits. Product information needed by MSME consumers is easier and transactions are faster and more accurate. Increase in the number of

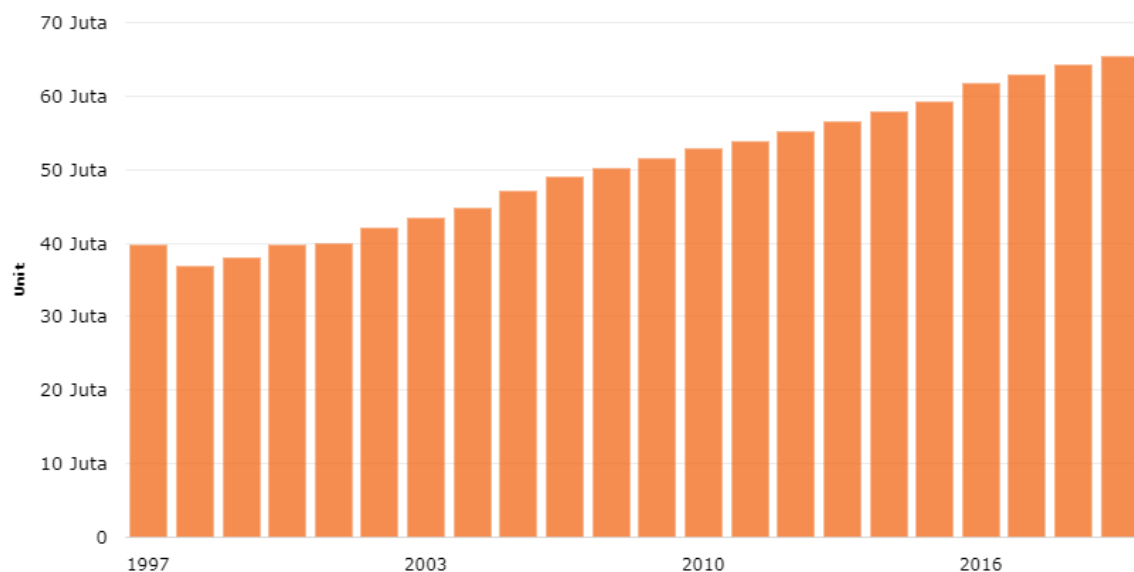
online shops create transaction value E-commerce in Indonesia has increased where in 2018 it reached IDR 77.766 trillion. This figure skyrocketed 151% compared to the previous year which reached IDR 30.942 trillion. The data illustrates that sales through E-commerce have a positive impact on trade, especially MSMEs (Karyati 2019).

The increase in the use of Marketplace has been higher since the Covid-19 pandemic, not only consumers who are looking for products prioritize the marketplace. But there is also an increasing number of people starting MSMEs and marketing them through marketplaces.

The increase in MSME online shop users in E-commerce, especially Marketplace, has had an impact on legal issues between business actors, consumers, and the Marketplace platform as a place for trade intermediaries. This problem does not get an effective solution because Indonesia does not yet have laws and regulations that regulate E-commerce and regulate the Marketplace (Sumual and Muhammad 2022).

The number of Indonesian Micro, Small, and Medium Enterprises (MSMEs)

Source: Central Bureau of Statistics (BPS)



E-commerce Association (idEA) notes that around 19 million MSMEs sell on digital platforms (Setyowati 2022) and Indonesian MSMEs increased by 1.98% in 2019. Micro, Small, and Medium Enterprises (MSMEs) are one of the sectors that have been negatively affected by the covid-19 pandemic. There has been a decline in consumer purchasing power and income for business actors. The positive thing is the accelerated use of digital technology and the increasing involvement of MSMEs in the digital market.

In order to support the progress of MSMEs, the Government of Indonesia provides fiscal incentive assistance in the National Economic Recovery Program (PEN). In 2020, the realization of support for MSMEs reached IDR 112.26 trillion. This takes into account

fluctuations in economic growth and in order to support MSMEs to continue to grow, the budget allocation provided for MSMEs and corporations in 2021 is IDR 171.77 trillion (Kominfo 2021).

E-commerce consumers have been discussed a lot, but there is still a lack of discussion on the protection of MSMEs in the Marketplace. Several laws and regulations governing consumer protection in e-commerce include: 1) Law Number 8 of 1999 concerning Consumer Protection (“UU 8/1999”), 2) Law Number 11 of 2008 concerning Information and Electronic Transactions (“UU ITE”) as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 regarding Information and Electronic Transactions (“Law 19/2016”), and 3).

Losses due to electronic transactions carried out online can not only be experienced by consumers. Losses are also often experienced by business actors caused by consumers or marketplace platforms. The losses experienced by business actors were caused by the non-fulfillment of the achievements that should have been made by the consumer, as well as discounted costs imposed by the marketplace platform. Even though the parties have not reaped their achievements, the business actors have processed the goods ordered by consumers using their personal funds. When the order is in the hands of the business actor and the consumer does not make a payment. Orders will cause losses because business actors who should get profits don't even get them (Berata and Widiatedja 2016).

Agreements on marketplace contracts are different from conventional buying and selling contracts which are generally approved by signature or by an agreement between the seller and the buyer. The agreement between the seller and the buyer in the electronic marketplace is by selecting the agree button or confirming the order so that an agreement is made. An agreement in E-commerce via E-marketplace occurs when a payment transaction has been fulfilled by the consumer, after checking out the goods on the marketplace platform, then at that time an agreement also occurred. Acceptance Theory (vertrouwenstheorie), teaches that the agreement occurs when the statement of will is considered worthy of being accepted by the offerer (Prasetya, Dewi, and Ujjanti 2022).

The results of observations related to MSME constraints on E-commerce, especially the Marketplace, and the problem analysis that has been carried out, there are various issues that need attention. The legal knowledge of the people of Medan City and its surroundings, especially those who take on the role of MSME actors in the marketplace system, is still very limited. Regarding statutory provisions that need to be considered in transacting on a marketplace platform and resolving legal issues when transacting digitally on a marketplace (Mawarni 2016).

Learning from the application of laws and regulations in Japan regarding E-commerce, the arrangements are better organized than in Indonesia. Evidenced by the existence of more specific laws and regulations and institutions that facilitate the resolution of problems faced by E-commerce actors. Interpretive Guidelines on Electronic Commerce and Property Trading Information can be accessed on the official website of The Ministry of Economy, Trade, and

Industry (METI). This comparison of the application of laws and regulations in Indonesia and in Japan then prompted the formulation of the problem in this paper.

2.0 PROBLEM

- a) How is the legal protection for MSME players against the obstacles faced in the Marketplace?
- b) What is the comparison of legal protection for business actors in Japan?

3.0 RESEARCH METHODS

The research method used is empirical juridical, which clearly describes the Indonesian legal system in response to the development of electronic transactions (e-commerce), then in this study, the aim is to find answers to problems. The data that has been collected and processed will be discussed using the Qualitative Normative method, namely the discussion is carried out by interpreting and discussing the data that has been obtained and processed, based on legal norms, legal doctrines, and existing legal science theories, related to collecting data the researcher distributed questionnaires to find out the problems faced by MSMEs in Medan City in conducting transactions through e-commerce and marketplaces. Source of data used in the form of primary data and secondary data. The data that has been collected is then processed and discussed using qualitative methods and then presented descriptively.

4.0 RESULTS AND DISCUSSION

Law Number 20 of 2008 regulates Micro, Small, and Medium Enterprises (MSMEs). UMKM is a company that is classified as UMKM a small company that is owned and managed by a person or owned by a small group of people with a certain amount of wealth and income. Republic of Indonesia Government Regulation No. 17 of 2013 concerning MSME Business Development, Partnerships, Licensing, Coordination and Control of MSME Empowerment, and Transitional provisions.

Criteria for MSMEs and Large Enterprises Based on Turnover

Business Size	Criteria	
	Asset	Turnover
Micro business	Maximum IDR 50 million	Maximum IDR 300 Million
Small business	> IDR 50 million – IDR 500 million	>IDR 300 Million – IDR 2.5 Billion
Medium Business	> IDR 500 Million – IDR 10 Billion	> IDR 2.5 Billion – IDR 50 Billion
Big business	> IDR 10 billion	> IDR 500 Billion

Source: **LPPI and Bank Indonesia**

Micro business, small and medium enterprises (MSMEs) have a role important in improving the economy of the Indonesian people. Indonesia's economic growth is inseparable from the role of MSME businesses. In particular, the contribution of MSMEs to gross domestic product (GDP). In 2018, the contribution of MSMEs to the national GDP reached around 60.34%. In terms of numbers, small businesses in Indonesia contribute more to GDP, reaching 93.4 percent, then medium businesses at 5.1 percent, and large businesses at only 1 percent (Karyati 2019).

There are several advantages to utilizing E-commerce, especially the Marketplace for MSMEs, namely (Mansur 2005):

1. As a vehicle for creating revenue (revenue generation) that is difficult to reach by conventional means, such as direct marketing of products or services; selling information, advertisements (banners), opening cyber malls, and so on;
2. Reduce operational costs. Savings on paper and telephone costs, no need to set up outlets, large operational staff, large warehouses, and so on. Product cycle efficiency and supplier management. MSME actors can order raw materials or product suppliers directly when there is an order so that the turnover of goods is faster and there is no need for a large warehouse to store these products;
3. Expanding the reach (global reach). Customers can contact the company/seller from anywhere in the world;
4. Unlimited operating time. Business via the internet can be done 24 hours per day, 7 days per week;
5. Customer service is better. Through the internet, customers can convey their needs and complaints directly so that companies can improve their services.

Meanwhile, E-commerce transactions can be carried out in several types, namely as follows (Turban E, King D 2016):

- a) Business to business (B2B): a type of E-commerce where companies offer or sell their products to other companies. In business, the company that sells the product is called a supplier.
- b) Collaboration commerce (E-commerce): In this type of E-commerce, business partners collaborate electronically. Such collaboration often occurs between business partners along the supply chain.
- c) Business-to-customers (B2C): the sellers are organizations or companies, and the buyers are individuals. The company offers service products to consumers.
- d) Consumer-to-business (C2B): in C2B, individuals introduce certain products or services needed, and suppliers compete to provide goods or services that consumers need by buying the products offered by these individuals. For example, Priceline.com, where individuals tell the name of the desired product and price, and Priceline.com tries to find suppliers to meet the needs offered.

Boris Wertz and Angela Tran Kingyens in their writings provide a definition, "An Marketplace is a type of E-commerce site that connects those looking to provide a product or service (sellers) with those looking to buy that product or service (buyers). These buyers and sellers may have

had trouble finding each other before, and thus the marketplace creates efficiency in an otherwise inefficient market (Wertz 2015).

Article 1 Paragraph 4 of Regulation of the Minister of Finance of the Republic of Indonesia Number 210/PMK.010/2018 Concerning Tax Treatment of Trading Transactions Through Electronic Systems (E-commerce) regulates Marketplace, that marketplace is an electronic communication facility used for transactions to carry out trading business activities online electronically (Kemenkeu 2018). Government Regulation of the Republic of Indonesia Number 80 of 2019 Concerning Trading Through Electronic Systems, marketplaces are classified as electronic system operators, Trading through electronic systems is every person, state administrator, business entity, and community that provides manages, and/or operates electronic systems independently or together with marketplace users for their own needs.

Legislation has so far not specifically regulated Marketplace, both provisions regarding admin fees by several different marketplace platforms and the absence of a special institution that handles the settlement of cases between marketplaces, sellers or merchants, and consumers (Rodli 2021). Provisions of laws and regulations relating to marketplaces are contained in Law Number 19 of 2017 the second amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions, Law Number 7 of 2014 concerning Trade, as well as several regulations under it, namely Government Regulations Number 71 of 2019 concerning Implementation of Electronic Systems and Transactions improvement of the revision of Government Regulation Number 82 of 2012 concerning Implementation of Electronic Systems and Transactions, Government Regulation Number 80 of 2019 concerning Trading Through Electronic Systems (E-commerce), Regulation of the Minister of Communication and Informatics of the Republic of Indonesia Number 11 of 2018 concerning Implementation of Electronic Certification, Regulation of the Minister of Finance Number 210/PMK.010/2018 concerning Tax Treatment of Trade Transactions through Electronic Systems which will come into force as of April 1, 2019 (Fitriana 2020).

The main framework of laws and regulations related to E-commerce activities before the issuance of regulations that specifically regulate the E-commerce sector is centered on Law No. 11 of 2008 concerning Information and Electronics, as amended into Law No. 19 of 2016, but the ITE Law does not regulate specifically and comprehensively because the characteristics of E-commerce are different from conventional trading systems. However, there are still many provisions in the ITE Law that regulate more specifically, thus requiring implementing regulations. Some of them are closely related to the development of E-commerce activities, such as; the Provisions regarding the implementation of electronic transactions, such as the National Cyber and Crypto Agency (BSSN) were only inaugurated by the president in 2018. The formation of BSSN electronic certificate services can be provided to a wider range of parties. Supporting digital transactions, the Minister of Communication and Informatics (Kominfo) has just launched 2019 electronic Certificate Administration institutions that support digital transactions, including the Agency for the Assessment and Application of Technology (BPPT), and four partners from the private sector, namely Privy.id, Peruri, Digsign, and Vida is an institution that is also the main institution for issuing digital or

electronic certificates managed by the Directorate General of Informatics Applications of the Ministry of Communication and Information.

Other provisions regarding electronic transactions in Chapter V, the ITE Law still mandate the issuance of government regulations to regulate the implementation of electronic transactions in the public or private sphere. The ITE Law does not explain the scope of implementation provisions that can be regulated in the Government Regulation (Article 17 and its explanation in the ITE Law).

The terms and conditions regarding admin fees are determined unilaterally by the Marketplace Platform. MSME players who register their shops online on the marketplace platform mean that they agree to the terms and conditions set by the marketplace platform (Firmansyah 2017). The results of an analysis of cases faced by MSMEs in Medan City, one of the obstacles faced is that the admin fees set by the Marketplace platform are too high. The E-Market Platform as an intermediary that connects sellers and buyers determines the percentage of admin fees for using the platform. This admin fee rate is different for each E-commerce platform.

Tokopedia and Shopee are marketplace platforms that lead the e-commerce market. The average Tokopedia visitor reached 157.2 million in the first quarter of 2022. Meanwhile, Shopee is in second place with an average monthly visitor of 132.77 million (Iprice 2022).

Tokopedia charges a merchant admin fee according to the seller's classification. This seller classification is determined based on sales turnover, a form of business entity, and products marketed. There are 4 classifications of merchants with different admin fees charged at Tokopedia, namely Regular Merchants at 0.5% per transaction, Power Merchants at 1.25% per transaction, Power Merchant Pro at 1.5% per transaction, and finally, the Official Store at 15% per transaction (Berdu.id 2021).

Shopee also applies admin fees at different rates according to the seller level. This seller level is determined by the number of products owned, product authenticity, return policy, sales results, and standard shopee product listings. In general, MSMEs are only at the Star Seller level. The highest level is the sales of big brand companies. The admin fee at the shopee is determined by the size of the transaction based on the percentage count. For the non-star level, that is, if you have successfully made a sales process of 100 sales, then the admin fee charged is 1.6% or 0.75 for certain products. Star or Star+ levels are subject to an admin fee of 1.25% to 2%. For the shopee mall level, a fee of 1% to 5% is charged and a 10% VAT calculation is applied (Shopee 2022).

Another obstacle that is often experienced by MSME actors is in transactions using the COD (Cash on Delivery) payment method. The thing that is often experienced by MSMEs in the Marketplace is the cancellation of purchases or rejection of products that have been sent via freight forwarding unilaterally by the intended consumer. Canceling purchases or refusing to pay for these products is clearly very detrimental to MSME actors (Faras, Sutrisno, and Salah 2022). When a product order is confirmed by a consumer, it means that there has been an agreement between the MSME actor and the consumer for payment of a sum of money for a product to be delivered. If the consumer cancels unilaterally by refusing to accept the product

and make a payment, then the consumer is in default and is identified as not having good faith (Berata and Widiatedja 2016).

Republic of Indonesia Government Regulation No. 71 of 2019 concerning the Implementation of the Electronic Transaction System Article 45 regulates the requirements for electronic transactions that parties must pay attention to in good faith, the principle of prudence, transparency, accountability, and fairness. Consumers who have selected the order confirmation button on the marketplace mean that they have agreed to an electronic contract in accordance with Article 46 of Government Regulation No. 71 of 2019.

Things contained in electronic contracts include cancellation procedures by the parties and provisions that give the right to the aggrieved party to be able to return goods and/or request a product replacement if there are hidden defects. So that if the unilateral cancellation by the consumer is not in accordance with the procedure, the cancellation should not be carried out (Faras, Sutrisno, and Salah 2022).

Obstacles in on Delivery (COD) faced by MSME actors after making good faith in sending products that are in accordance with safe packaging, it is the consumer who unilaterally rejects the goods on the grounds that the goods do not match the product catalog photo on the marketplace or the address to which no party receives.

Article 1226 of the Civil Code regarding the conditions for canceling an agreement that the conditions canceling are deemed to have always been included in a reciprocal agreement if one of the parties does not fulfill their obligations. It is not null and void, but cancellation must be submitted to the Court. Article 1267 of the Civil Code, the party against which the agreement is not fulfilled, can choose, force the other party to fulfill the agreement, if this can still be done, or demand cancellation of the agreement, with compensation for losses and interest.

Provisions in PP No. 71 of 2019 and in the Civil Code can be applied if there are COD (Cash on Delivery) problems made by consumers in the marketplace. The application of this article is to avoid losses suffered by MSME actors. The reality is that often under the pretext of legal protection for business actors (merchants) in the marketplace, the goods are sent directly to the seller so that the MSME players get their goods back. Even though in fact this is still detrimental to the MSME actors because the goods are not being sold and they have also carried out their obligations according to article 5 of the Consumer Protection Law.

If the problem with the COD (Cash on Delivery) case is only resolved by returning goods to MSME actors as merchants in MSME, then it will not give a deterrent effect on consumers that this act is detrimental to other parties.

If you compare Japan, based on the results of research on the Japanese E-commerce market, it dominates the market more. The biggest platforms for E-commerce are Rakuten, Amazon, and Yahoo. Estimates are around 50% Japanese E-commerce, Rakuten and Amazon market around 40% combined, and Yahoo about 9%.

The main legislative instrument legal instruments in Japan relating to e-commerce are the Law on Special Provisions of the Civil Code Concerning Electronic Consumer Contracts and

Notification of Electronic Acceptance (Law on Special Provisions), the Law on The Act of Specified Commercial Transaction (ASCT) and the Act on Regulation of Transmission of Specified Electronic Mail (ARTSEM). E-commerce business operators are required to inform consumers about certain items, such as cancellation policies, and prohibit e-commerce business operators from sending junk e-mails. The Consumer Contracts Act prohibits e-commerce business operators from including extremely unfavorable conditions in their terms of service. Several intellectual property laws also apply to Internet-related matters.

The Ministry of Economy, Trade, and Industry (METI) have published Interpretive Guidelines on Electronic Commerce and Trading of Information Properties on its website. These guidelines have been updated annually or every few years and their scope has been expanded. The guidelines contain procedures for applying Civil Provisions, the Consumer Contract Law, the Law on Special Provisions, and the ASCT for e-commerce business conditions, amendments to terms of service, protection of minors, and various issues related to internet services. Furthermore, these guidelines cover the application of intellectual property laws, including copyright laws, trademark laws, premiums and representation laws that regulate advertising issues, internet-related laws, and E-commerce businesses (Kawai 2022).

In Japan, e-commerce service providers such as Rakuten, Yahoo!, and Amazon started to take off in the late 1990s due to the wider use of the internet. E-commerce services were originally in the form of B2C transactions. With the proliferation of smartphones and social network services (SNS), however, various e-commerce sites were gradually established, including those offering C2C-type services, such as Mercari, a marketplace that allows the sale and purchase of used goods between individuals, and provides experiential services. Although the use of e-commerce services is common in Japan, cash is still the most common payment method for purchases of goods and services in physical stores.

Cash is still the most common medium of exchange in Japan. The most popular payment methods after cash are credit cards and prepaid instruments. It has been observed that cashless payments are significantly less common in Japan than in other major economies. However, it is noteworthy that since 2018 more and more companies are entering or expanding their business into the mobile payment market. For example, many companies launched QR code payment services (such as Pay Pay, Line Pay, and the like) between 2018 and 2019. Since many of these companies provide incentives to their customers to use their QR code payment services, this market sector has become highly competitive.

To encourage the use of cashless payments and mitigate harms from the tax increase consumption. In October 2019, Government of Japan also introduce a program piece price point rewards a big 5%. Those who use certain cashless payment methods at eligible stores will be eligible for discounts under this program from October 2019 to June those who use certain cashless payment methods at eligible stores will qualify for discounts under this program from October 2019 to June 2020. As a result of the covid-19 pandemic, digital payments are increasingly being used to avoid physical money.

When compared to Indonesia, Japan faces the same challenges. But Japan looks more prepared on the regulatory front. Indonesia can learn from Japan in responding to this challenge, especially in preparing regulations that will be specifically enforced in e-commerce.

5.0 CONCLUSION

- a) The increasing volume of transactions in the marketplace carried out by MSME actors has greatly affected the Indonesian economy. Either directly or indirectly. Therefore, the government should pay more attention to building and developing its ecosystem, especially in establishing laws and regulations specifically regarding marketplaces. Articles that can be applied to avoid losses suffered by MSME actors due to COD cases are articles 45 and 46 of PP No. 71 of 2019 concerning the Implementation of Electronic Systems. As well as articles 1226 and 1267 of the Civil Code so that if there is a cancellation outside the agreement, the party must pay compensation.
- b) Based on the results of the research, Indonesia can make comparisons with Japan in terms of Marketplace arrangements. The Japanese government has provided specific laws and regulations so that problems that occur in the marketplace can be overcome. The Japanese government also supports the use of a cashless so that problems such as COD do not occur in transactions on the marketplace.

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Ethical Approval (not Applicable)

If applicable include the following details:

- a) Full name of the committee that approved the research;
- b) Confirmation that all research was performed in accordance with relevant guidelines/regulations applicable when human participants are involved (e.g. Declaration of Helsinki, or similar);
- c) If a study was granted exemption from requiring ethics approval, the reason for this should be explained in sufficient detail

Informed consent

This article does not contain any studies with human participants performed by any of the authors.

Author's contribution

The authors Lesly Saviera, Cheryl Patriana Yuswar, Ningrum Natasya Sirait, and Rosmalinda from Indonesia compiled, planned community services, and perform data processing from Indonesia meanwhile Steven Jos Van Uytsyel provided information situation in Japan.

Conflict of interest

We certify that the article is the author's original work. This manuscript has never been submitted for publication and has never been published in whole or in part elsewhere. We certify that all Authors have made a significant contribution to the work, validity, and legitimacy of the data and their interpretation for submission.

Data availability statement

The terms and conditions regarding admin fees are determined unilaterally by the Marketplace Platform. MSME players who register their shops online on the marketplace platform mean that they agree to the terms and conditions set by the marketplace platform. The results of an analysis of cases faced by MSMEs in Medan City, one of the obstacles faced is that the admin fees set by the Marketplace platform are too high. The E-Market Platform as an intermediary that connects sellers and buyers determines the percentage of admin fees for using the platform. This admin fee rate is different for each E-commerce platform On Page 5, paragraph 3

Based on terms and condition between researcher and respondent, the data belongs to the research as keeper, which available in this link:

https://docs.google.com/forms/d/1Kw_fmtirJDr1Fs2VlrXyWbmyj8jmo0f-nXU92G0Ls7A/edit?pli=1#responses. However, of the data not allowed to others to access.

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