

# The Urgency of the Regulation Prohibiting Social Commerce in Indonesia from the Perspective of Maslahah Mursalah

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## Abstract

This research aims to assess the importance of social commerce regulations, explore the development and implementation of these regulations in Indonesia, and understand Maslahah Mursalah's views on them. The rapid growth of digital technology has significantly advanced various scientific disciplines, particularly in the economic sector, where business actors, especially Micro, Small, and Medium Enterprises (MSMEs), are increasingly participating in the e-commerce space. The rise of online trading trends that utilize social media as a primary platform (social commerce) has prompted government awareness of e-commerce's growth potential, leading to the adoption of strict and enforceable regulations. This study employs a normative juridical research methodology, focusing specifically on secondary data sources, which include primary legal materials such as statutory regulations (legislative approach) and secondary legal sources accessed through library research. The study revealed that Minister of Trade Zulkifli Hasan has issued new regulations, specifically Minister of Home Affairs Regulation (Permendagri) Number 31 of 2023 concerning Licensing, Advertising, Development, and Supervision of Trading Business Entities via Electronic Systems. This law aims to support MSMEs, clarify social commerce operations, and foster a robust e-commerce ecosystem. However, some critics argue that the government's issuance of this regulation lacks substance and is hasty. Mursalah's concern is that government regulations, specifically Minister of Trade Regulation Number 31 of 2023, only address a limited number of aspects related to enhancing human welfare, particularly for commercial actors.

**Keywords:** Maslahah Mursalah; Regulation; Social Commerce

## 1. INTRODUCTION

Nowadays, with the rapid advancement of information technology, information systems have become indispensable for various tasks. By correctly utilizing technology, we can create highly accurate information.<sup>1</sup> The rapid development of technology has significantly influenced human lives across various fields. One of the most important advancements in modern technology is the increased speed of internet connectivity. As of July 2023, Indonesia had 212.35 million internet users, making it the seventh-largest country in Southeast Asia in terms of internet users. This growing number of internet users has contributed to the rapid emergence of digital companies in Indonesia. According to the January 2024 startup ranking report, Indonesia has 2,562 startups, positioning it as the sixth-largest startup ecosystem in the world.

The economic impact of internet technology has been substantial. The digital economy, representing a new era in the modern economy, has created new opportunities for business, commerce, and trade. Distance is no longer an impediment to conducting business due to the use of internet technology. Agreements made online can be referred to as

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<sup>1</sup> Ai Nur Sa'adah, Ayu Rosma, and Dea Aulia, "Persepsi Generasi Z Terhadap Fitur Tiktok Shop Pada Aplikasi Tiktok," *Transekonomika: Akuntansi, Bisnis Dan Keuangan* 2, no. 5 (2022): 131–40, <https://doi.org/10.55047/transekonomika.v2i5.176>.

electronic transactions, as stipulated in Article 1, paragraph (2) of Law Number 11 of 2008 concerning Electronic Information and Transactions, which states that electronic transactions are legal actions conducted using a computer, computer network, and/or other electronic media.<sup>2</sup> The rapid advancement of internet technology is driving the growth of trade, commonly referred to as electronic commerce or e-commerce. In addition to e-commerce, there is another emerging trend in online commerce known as social commerce. Social commerce is a commercial activity that primarily occurs on social media platforms such as Facebook, Instagram, and TikTok.

Trading operations on social media in Indonesia provide a variety of opportunities for sellers and buyers to conduct transactions without the need to meet in person. TikTok is one of the most popular applications and features TikTok Shop, a hybrid of social networking and a marketplace. TikTok is known to have business permissions only as a social networking platform, not as a marketplace; however, it can add additional services like TikTok Shop because there are no restrictive laws under Indonesian legislation. On the TikTok app, vendors can engage in live sales activities with buyers through the comments section, and there is a yellow basket to facilitate transactions between sellers and buyers.<sup>3</sup> There are no prohibitions on businesses trading in electronic media, allowing them to enhance revenue while also providing customers with the convenience and ease of making transactions through cell phones, laptops, or other electronic devices.<sup>4</sup>

However, the presence of additional features like TikTok Shop in the app is problematic. As a result, it has become essential for the government to strengthen the roles of the Ministry of Commerce and the Competition Oversight Commission (KPPU) in monitoring trade flows, particularly in electronic media, given the emergence of various applications in Indonesia. It is necessary to implement strict regulations to ensure that each application has a clear business license, establishing healthy and fair trade for all entrepreneurs, whether in online or offline marketing. Currently, regulations are perceived as insufficiently strict, as they only prohibit social commerce organizers from facilitating transactions through their electronic systems. Many social media applications, such as TikTok Shop, still facilitate such transactions while functioning simultaneously as both social media and a marketplace. These applications may pose a threat to local actors and micro, small, and medium-sized enterprises due to the emergence of predatory pricing—an attempt by companies to sell prices below the cost of production to eliminate competitors,

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<sup>2</sup> Meiliana Kamila and Imam Haryanto, “Tanggung Jawab Hukum Perusahaan Ekspedisi Atas Hilangnya Barang Konsumen,” *Jurnal USM Law Review* 5, no. 2 (2022): 832, <https://doi.org/10.26623/julr.v5i2.5750>.

<sup>3</sup> Ai Nur Sa’adah, Ayu Rosma, and Dea Aulia, “Persepsi Generasi Z Terhadap Fitur Tiktok Shop Pada Aplikasi Tiktok,” *Transekonomika: Akuntansi, Bisnis Dan Keuangan* 2, no. 5 (2022): 131–40, <https://doi.org/10.55047/transekonomika.v2i5.176>.

<sup>4</sup> Carissa Amanda Siswanto et al., “Perlindungan Konsumen Terhadap Pembelian Obat Mengandung Psikotropika Pada Online Marketplace Bagi Pengidap Virus Covid-19 Dengan Atau Tanpa Gejala Melalui Telemedicine Konvensional Yang Membedakan Adalah Media Yang Digunakan , Seoerti Halnya,” *Jurnal USM Law Review* 5, no. 2 (2022): 553–68.

which they later recoup once those competitors have been driven out of business.<sup>5</sup> This leads to unhealthy competition in the trade ecosystem, so it is essential for entrepreneurs to understand and adhere to ethical business practices that comply with the principle of fairness in the business world. In the context of social commerce regulation, an understanding of *mursalah* can help define rules and guidelines that are consistent with Islamic principles. Although the concept of social commerce—trade through social media and other digital platforms—is not specifically addressed in the Quran or the Hadith, general Islamic principles related to business and trade can offer guidance for social trade practices. Business transactions should be conducted without harming either party, must not involve speculation (*maysir*), should not contain ambiguity (*gharar*), and should be free of interest. As the Quran states in Surah al-Baqarah: 275, "Allah has permitted trade and forbidden interest." This includes ensuring that digital transactions comply with Shariah law and do not threaten the social or economic well-being of the community. Furthermore, the researchers also reviewed the results of previous research. Reviewing previous research results has the aim of obtaining comparison material and references. Besides, this review is also aimed at avoiding similarities with existing research. Then in the review of the library, the researchers listed the results of previous research based on two titles. In a study conducted by Rena (2023), using a method of normative jurisprudence approach. The study explains the impact of the ban on the use of social commerce (TikTok Shop) in Indonesia regulated by the Ministry of Commerce Regulation No. 31 Year 2023 and explains the effect of such regulation on entrepreneurs and affiliates on social networks.<sup>6</sup>

In a study conducted by Andriansyah (2023), the focus was on establishing consumer protection guarantees in social commerce in accordance with positive laws and identifying their weaknesses. The research utilized a doctrinal method to analyze the regulatory framework of social commerce and e-commerce, as well as to examine reforms in consumer protection legislation.<sup>7</sup> In a study conducted by Mahran (2023) using a normative jurisprudence approach, the author explains the importance of understanding applicable regulations, maintaining consumer trust, and operating ethically and legally in accordance with PERMENDAG No. 31 of 2023.<sup>8</sup>

Based on previous research similar to this study, it can be stated that this study differs from earlier ones. The developments and social facts related to the use of social media and the conditions of society underscore the urgency of this research. The effort to reform the

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<sup>5</sup> Vicky Darmawan Prahmana and Ditha Wiradiputra, "Predatory Pricing Dalam E-Commerce Menurut Perspektif Hukum Persaingan Usaha," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 6, no. 3 (2022): 9844–53, <https://doi.org/10.58258/jisip.v6i3.3277>.

<sup>6</sup> Rena, Iftitah Dian Humairoh, and Mia Rosmiawati, "Problematika Normatif Dalam Peraturan Menteri Perdagangan Nomor 31 Tahun 2023 Terkait Larangan Social-Commerce Pada Tiktok Shop," *Jurnal Crepido* 05, no. November (2023): 184–95.

<sup>7</sup> Adriansyah and Muthi'ah Maizaroh, "Pembaharuan Hukum Perlindungan Konsumen: Kesiapan Indonesia Menyambut Kehadiran Social Commerce (Consumer Protection Law Reform: Indonesia's Readiness to Welcome Social Commerce)," *Jurnal Rechts Vinding* 12, no. 2 (2023): 319–40, <https://rechtsvinding.bphn.go.id>.

<sup>8</sup> Adriansyah and Maizaroh, "Pembaharuan Hukum Perlindungan Konsumen: Kesiapan Indonesia Menyambut Kehadiran Social Commerce (Consumer Protection Law Reform: Indonesia's Readiness to Welcome Social Commerce)."

law on social commerce is a step toward addressing the issue. This research aims to assess the importance of social commerce regulations, explore the development and implementation of these regulations in Indonesia, and understand Maslahah Mursalah's views on them.

## **2. METHOD**

This study employs a normative jurisprudence technique, which investigates secondary data or library studies as a foundation by reviewing legislative rules and relevant library resources on the topic. This normative legal approach utilizes the statute approach, also known as the legislative approach, whereby all laws and regulations pertinent to the legal issues under consideration are examined. The research methodology applied in this study is descriptive analysis, which involves outlining the regulation of the social commerce prohibition. The data used in this study consists of secondary data sourced from existing literature and library investigations. This secondary data includes primary legal information, such as legislative laws like the Ministry of Commerce Regulation No. 31 of 2023, which governs business licenses, advertising, construction, and the oversight of business actors involved in trade using electronic systems. Secondary legal sources include books, scientific publications, and journals. Data collection methods involve examining secondary data from libraries to conduct an inventory of the legal materials necessary for this research. The data analysis approach used in this study is qualitative descriptive analysis, which entails gathering relevant data to support arguments in discussions about the urgency of regulating the prohibition of social commerce in Indonesia. This information is then organized into logical and methodical descriptions, examined to provide explanations, and conclusions drawn from general to specific. In this study, the author will explain, derive, and evaluate the facts to present them clearly.<sup>9</sup>

## **3. RESULTS AND DISCUSSION**

### **3.1 The Urgency of the Regulation Prohibiting Social Commerce.**

Trading activities involving goods or services conducted by business actors can occur offline through shops or shophouses in shopping centers. However, with the rapid development of technology and information, marked by the emergence of e-commerce, business actors have also begun to establish online stores, particularly through marketplaces. This shift allows them to expand their marketing reach, making their products accessible to all Indonesians and people around the world, thereby facilitating electronic transactions.<sup>10</sup> In addition, business actors utilize social commerce, or social media, as a means of promotion. Therefore, they need to comply with all applicable regulations, including laws and guidelines related to the chosen marketplace where they open their online stores.

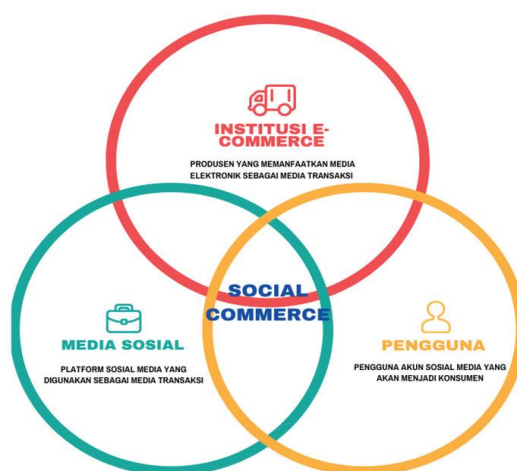
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<sup>9</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Cet. VIII (Jakarta: Kencana Prenada Media Group, 2013).

<sup>10</sup> Gelora Martanti, "Perlindungan Konsumen Bagi Penyandang Disabilitas Pada Sektor Perdagangan Online Berbasis Aplikasi Marketplace," *Jurnal USM Law Review* 6, no. 1 (2023): 242, <https://doi.org/10.26623/julr.v6i1.6387>.

The emergence of social commerce has significantly impacted the rapid growth of market share, driven by the high number of electronic media users. Consequently, there is a need for legislation that can protect public commercial operations within a legal framework. In international law, social commerce is often considered a subset of e-commerce by various governments. We can define social commerce as a social media platform that features special tools, menus, and/or facilities that enable merchants to publish offers for products and/or services.<sup>11</sup> The following image illustrates the relationship between social commerce and e-commerce activities on social media.

**Illustration 1.** the relationship between social commerce and e-commerce.



*Source: Secondary data, processed (2024)*

From Illustration 1, it can be explained that social commerce is the intersection of e-commerce, social media platforms, and the users who become consumers. Thus, it is evident that social commerce represents a significant breakthrough in the development of e-commerce.

Regulations banning social commerce emerged following economic activity on a digital platform called TikTok Shop. This began with complaints from entrepreneurs about decreased turnover in traditional markets. They believe consumers are increasingly turning to e-commerce, which offers lower prices and the convenience of online transactions without the need to visit physical markets. In response, these business owners urged the government to take action to close economic activity on the TikTok Shop platform to improve the conditions of small and medium-sized enterprises (SMEs) and entrepreneurs in the traditional markets facing declining sales. In light of this issue, the government, particularly the Minister of Commerce, issued a ministerial regulation approved on September 26, 2023, as a response to the concerns raised by local SMEs and entrepreneurs in the Brotherland Market.

<sup>11</sup> Adriansyah and Maizaroh, "Pembaharuan Hukum Perlindungan Konsumen: Kesiapan Indonesia Menyambut Kehadiran Social Commerce (Consumer Protection Law Reform: Indonesia's Readiness to Welcome Social Commerce)."

Additionally, local SMEs (small and medium-sized enterprises) complain about the acquisition of social commerce features provided by TikTok, which offers a commission of 10% to those who become sellers or affiliates.<sup>12</sup> This prompted the government to conduct further observations on the conditions faced by local MSME entrepreneurs due to the easily accessible social commerce features on TikTok Live, which can attract significant consumer interest while engaging with social media and collaborating with content creators who resonate with Indonesia's millennial generation.<sup>13</sup> The presence of promotional content and live TikTok sessions emphasizes products that are favorably priced in the market, causing local SMEs to feel increasingly overwhelmed. This is especially true with the involvement of public figures who have large followings and participate in TikTok Shop ventures. High-profile individuals, such as artists, influencers, entrepreneurs, and skincare specialists, who already possess significant economic advantages and a fan base, quickly seize the opportunity to utilize TikTok's sales features, either by selling their own products or acting as affiliates for merchants, earning commissions in the process. These opportunities can generate substantial income, driven by their fame and follower count, which indirectly exacerbates wealth disparity, making rich individuals richer. In contrast, market traders without such privileges struggle to compete. Many try to adapt by selling live or investing heavily in promotions, yet their sales remain low compared to those of celebrities and well-known figures.

Following this incident, some traders have sought to collaborate with individuals who have large followings, commonly referred to as affiliates. They do this by hiring promotional services and paying affiliates for their promotion. However, a common problem is that not all traders have enough funds to pay these affiliates. The government believes that if Minister of Trade Regulation Number 31 of 2023 is not issued, it could lead to significant overlap in the market. The issuance of this regulation aims to enhance the competitiveness of trade in Indonesia and strengthen the position of local SMEs. With this regulation, everyone can continue to promote on TikTok. However, for online buying and selling, they should still utilize the marketplaces that existed long before TikTok Shop emerged, to ensure that the functions of social media and commerce do not overlap.<sup>14</sup>

The government issued the Minister of Trade Regulation in response to unhealthy practices in the buying and selling system. TikTok Shop offers thrifted goods at more affordable prices than the market average, as this practice involves importing used items from overseas and selling them in Indonesia under well-known international brands. This trend has made thrifting more economical, capturing consumer interest with attractive prices

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<sup>12</sup> Dian Permata Sari, Muhammad Bintang Priyono, "Dampak Aplikasi Tiktok Dan Tiktok Shop Terhadap UMKM Di Indonesia," *Transportation Research Record* 9 No. 17, no. 1788 (2023): 497-506, <https://doi.org/https://doi.org/10.5281/zenodo.8315865>.

<sup>13</sup> Taupiqqurrahman Taupiqqurrahman Kartika Eka Rilani, "Tanggung Jawab Perdata Terhadap Kreator Konten Atas Penyebaran Komik Online Di Aplikasi Tiktok," *Jurnal USM Law Review* 6, no. 2 (2023): 689-701, <https://doi.org/10.26623/slr.v3i2.5564>.

<sup>14</sup> Rena, Humairoh, and Rosmiawati, "Problematika Normatif Dalam Peraturan Menteri Perdagangan Nomor 31 Tahun 2023 Terkait Larangan Social-Commerce Pada Tiktok Shop."

and styles. Consequently, there has been an influx of imported used goods into Indonesia, which has diminished the popularity of local products, particularly those from MSMEs. Additionally, a significant factor driving the interest in thrifed goods is the high demand for fashionable clothing; according to data from katadata.co.id, 73% of people prioritize their appearance with modern fashion. For these reasons, the government introduced the Minister of Trade Regulation to provide protection and a legal framework for local MSME operators. The government's decisions, as outlined in the regulation, aim to minimize potential negative events and reduce the risk of unfair business competition.<sup>15</sup>

### **3.2 Development and Implementation of Regulations to Prohibit Social Commerce in Indonesia.**

Commerce Law Number 7 of 2014 provides the basic framework for regulating commerce in Indonesia through electronic technologies. However, this legislation only addresses electronic trading in two provisions, specifically provisions 65 and 66. Additionally, regulations regarding trading via electronic systems are covered in several other laws, including Law Number 11 of 2008 (amended to Law Number 19 of 2016) concerning information and electronic transactions; Government Regulation Number 82 of 2012 regarding the implementation of electronic systems and transactions; Government Regulation Number 80 of 2019 concerning trading via electronic systems; and the Minister of Trade Regulation Number 50 of 2020, which governs business licenses, advertising, development, and supervision of business operators dealing through electronic systems.

The Republic of Indonesia's Law No. 7 of 2014 regarding Trade and its implementing regulations, including Government Regulation No. 80 of 2019 concerning Trading Through Electronic Systems, governs electronic transactions both domestically and internationally, with Indonesia serving as a broad market. This regulation states that if corporate actors fail to comply with Indonesian laws or standards, conflicts may arise, potentially causing harm to consumers. If the conditions required for e-commerce transactions are not met, such as violations of the provisions regulating the accuracy of information provided to consumers, business operators will be in violation of Article 80 of Government Regulation Number 80 of 2019 concerning Trading via Electronic Systems. In such cases, violators may face penalties, including the termination of their business license and registration on a trade blacklist. Their firms will undergo rigorous scrutiny and may be added to a trade watch list.

In regulating business actors in electronic trading, the Minister of Trade Regulation Number 50 of 2020 concerning Provisions for Business Licensing, Advertising, Development, and Supervision of Business Actors in Trading via Electronic Systems states in Article 3, paragraph (1), that "Business Actors are required to have a business license to carry out PMSE business activities." In this context, business actors include individuals or legal entities, whether in the form of legal entities or non-legal entities, who can be both domestic and international participants in the PMSE sector. This regulation requires a

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<sup>15</sup> Ferdinalus Lidang Witi, *Membangun E-Commerce: Teori, Strategi Dan Implementasi.*, ed. Amerta Media (Banyumas, 2021).

specific type of business authorization, known as a License for Trading Business via Electronic Systems (SIUPMSE), for those who engage in trading operations using Electronic Systems (PMSE).

This registration and licensing process is essential to ensure legal certainty and clarify the legal responsibilities of business entities. It also facilitates technological oversight and allows for the receipt of reports or complaints from the public. One of the government's primary objectives in requiring e-commerce players to register with the electronic system is to protect all stakeholders, including economic actors and consumers. Additionally, the electronic registration system serves as a preventive measure against issues such as online fraud, as it enables consumers to more easily identify commercial actors through government-provided websites.<sup>16</sup>

Therefore, we revoke Minister of Trade Regulation Number 50 of 2020, as it no longer aligns with current legal developments and societal needs. The introduction of Minister of Trade Regulation Number 31 of 2023 has led to significant changes in trade governance. These changes involve the use of electronic systems for guidance and supervision, including the identification of trade organizers. These systems encompass various business models, such as online retail, marketplaces, classified ads, intermediaries or platforms, daily deals, and social commerce.

According to Article 1, an online retailer is defined as a trader who owns, creates, and manages their own website or application. A marketplace facilitates part or all of the transaction process within an electronic system, enabling traders to offer goods and services. Online classified ads serve as a platform that connects sellers and buyers throughout the entire transaction process, without the involvement of PPMSE. Furthermore, an intermediary, also known as a platform, functions by displaying prices or services. Consumers use daily deals, which are electronic systems that sell discount coupons or other convenient payment options for goods and services. Meanwhile, social commerce, organized through social media, offers specific features, menus, or facilities for promoting and selling goods and services.<sup>17</sup>

The regulations outlined in Minister of Trade Regulation Number 50 of 2020 were revoked and replaced by Minister of Trade Regulation Number 31 of 2023, which introduced many significant changes. As a result, several aspects that were not previously regulated are now addressed in Minister of Trade Regulation Number 31 of 2023.<sup>18</sup>

Minister of Trade Regulation Number 50 of 2020 lacks clear definitions for trade organizers utilizing electronic systems, including online retail, marketplaces, classified ads, platforms, daily deals, and social commerce. These aspects are governed by the general

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<sup>16</sup> Zahra Afina Mahran and Muhammad Hasan Sebyar, "Pengaruh Peraturan Menteri Perdagangan (PERMENDAG) Nomor 31 Tahun 2023 Terhadap Perkembangan E-Commerce Di Indonesia," *Jurnal Ilmu Hukum Dan Sosial* 1, no. 4 (2023): 51–67, <https://doi.org/10.51903/hakim.v1i4.1440>.

<sup>17</sup> Arum Tarina, "Urgensi Izin Usaha Dalam Perdagangan Melalui Sistem Elektronik Bagi Usaha Mikro Dan Kecil," *Jurnal Pelita Ilmu* 14, no. 2 (2020): 88–106.

<sup>18</sup> Mahran and Sebyar, "Pengaruh Peraturan Menteri Perdagangan (PERMENDAG) Nomor 31 Tahun 2023 Terhadap Perkembangan E-Commerce Di Indonesia."



principles outlined in Article 1, Numbers 12-17 of Minister of Trade Regulation Number 31 of 2023. Additionally, Minister of Trade Regulation Number 50 of 2020 does not address PPMSE's responsibility to prevent data exploitation by affiliated enterprises and promote healthy business competition. This issue is covered in Article 13, Paragraph (3) of Minister of Trade Regulation Number 31 of 2023.

Moreover, Minister of Trade Regulation Number 50 of 2020 lacks specific regulations regarding business license requirements for both domestic and international businesses. This is detailed in Articles 3-22 of Minister of Trade Regulation Number 31 of 2023. The earlier regulation does not address the prohibition of social commerce operating as producers, which is outlined in Article 21, Paragraph (2) of Minister of Trade Regulation Number 31 of 2023. Furthermore, it does not specify restrictions on social commerce for electronic transactions, as covered in Article 21, Paragraph (3) of the same regulation.

Minister of Trade Regulation Number 50 of 2020 also fails to establish minimum pricing for foreign goods offered in Indonesia through cross-border e-commerce platforms. This requirement is governed by Article 19 of Minister of Trade Regulation Number 31 of 2023. Additionally, it does not include provisions regarding required, forbidden, restricted, or taxed items, which are detailed in Article 21, Paragraph (1) of Minister of Trade Regulation Number 31 of 2023. Lastly, the previous regulation does not specify standards for goods and services, including registration numbers, halal certificate numbers, product registration numbers for security, safety, health, and environmental compliance, as well as permit numbers for cosmetic, medicinal, and food products. These requirements are controlled by Article 11, Paragraph (1) of Minister of Trade Regulation Number 31 of 2023.

As a result, the enactment of Minister of Trade Regulation Number 31 of 2023 aims to support microbusinesses, small businesses, and medium-sized enterprises, as well as trading businesses utilizing domestic electronic systems. It seeks to protect consumers and encourage the development of trade through electronic systems while considering technological advancements. The legislation is designed to be dynamic in order to foster a fair and healthy commercial ecosystem, limiting data breaches and promoting healthy business competition.<sup>19</sup>

The TikTok Shop application serves as both a social media platform and a marketplace, commonly referred to as social commerce, facilitating the promotion and sale of goods and services in a single location. It offers convenience in transactions by eliminating the need to switch between applications and incorporates a live shopping feature that allows consumers to access product information directly from the seller.<sup>20</sup> According to Article 1, Paragraph 17 of Minister of Trade Regulation Number 31 of 2023, social media falls under the category of social commerce. This regulation restricts social media

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<sup>19</sup> Kholifatul Muna and Budi Santoso, "Regulasi Izin Perdagangan TikTok Shop Sebagai Fitur Tambahan Aplikasi TikTok Di Indonesia," *Jurnal USM Law Review* 7, no. 1 (2024): 412, <https://doi.org/10.26623/julr.v7i1.8950>.

<sup>20</sup> Nathania Alwi Ramdhani and Imron Musthofa, "Analisis Respons Umkm Dan Konten Kreator Terhadap Kebijakan Social Commerce Lewat Peraturan Menteri Perdagangan Nomor 31 Tahun 2023," *Jurnal Ekonomi & Bisnis* 11, no. 3 (2023): 433-43, <https://doi.org/10.58406/jeb.v11i3.1352>.

organizers from providing specific features, menus, and facilities, allowing them only to promote goods and services. It also prohibits social commerce from facilitating transactions between sellers and buyers.<sup>21</sup>

Therefore, Article 21, Paragraph (3) of Minister of Trade Regulation Number 31 of 2023 establishes stringent guidelines for TikTok, prohibiting PPMSEs with a social commerce business model from facilitating payment transactions on electronic systems. This separation between social media and marketplaces is essential to prevent competition and protect personal data from inadvertent threats, such as accidental or negligent internal data leaks, as well as intentional threats from external factors, including cyber attacks like hacking and viruses.

In terms of commercial rivalry, the TikTok Shop function within the TikTok application is not an e-commerce platform that has been authorized to operate as a marketplace, unlike Shopee, Tokopedia, Lazada, Blibli, Bukalapak, and others. Additionally, TikTok Shop operators tend to exploit their dominant position, as outlined in Articles 20 and 21 of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition, by engaging in predatory pricing. This practice can lead to "dumping," where prices are set extremely low during the product creation process, potentially allowing these operators to control up to 50% of the market share and giving rise to monopolistic activities.<sup>22</sup> As a result, TikTok must obtain a business license as a marketplace, separate from its social media platform, to avoid unhealthy competition with other applications.

TikTok Shop reappeared on December 12, 2023, following the release of Minister of Trade Regulation Number 31 of 2023, which required TikTok to partner with Tokopedia as a marketplace. Tokopedia signed an exclusive TikTok Shop deal valued at \$340 million, and TikTok invested \$840 million in Tokopedia, issuing a promissory note worth \$1 billion, bringing the total investment to \$1.5 billion. TikTok acquired 75.01% of Tokopedia's shares through an agreement with PT GoTo Gojek Tokopedia Tbk (GoTo), aiming to expand, strengthen, and encourage the growth of Indonesia's digital economy, with a particular focus on benefiting users and business actors, especially micro, small, and medium enterprises.

Currently, Tokopedia maintains and operates the TikTok Shop feature, which has returned to the TikTok app. The implementation of Minister of Trade Regulation Number 31 of 2023 is considered inappropriate and hasty, given that the TikTok Shop was closed on October 4, 2023. Now, the TikTok Shop can operate normally by collaborating with Tokopedia, which holds a valid marketplace license integrated within the same application. According to research by Momentum Works, Tokopedia ranks second behind Shopee, with a 35% market share. Meanwhile, with the acquisition of Tokopedia, TikTok's market share in Indonesia is expected to reach 28.1%.

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<sup>21</sup> Elis Sulistiani, Achmad Restu Adiansyah, and Ahmad Kautsari Khotimi, "Dampak Yang Dialami Usaha Mikro Kecil Dan Menengah Akibat Perubahan Peraturan Menteri Dagang Nomor 50 Tahun 2020" 7 (2023): 32468–76.

<sup>22</sup> Yazrul Anuar, Raju Moh Hazmi, and Jasman Nazar, "TikTok Shop VS E-Commerce VS State: Looking for a Balance Point in a Constitutional Economic Frame," *Law Jurnal* 4, no. 1 (2023): 1–10.

The merger of these two companies raises concerns about the potential for monopolistic practices in the e-commerce industry, as TikTok and Tokopedia are two significant players controlling a substantial portion of the market share in Indonesia. This dominance could hinder competition from other e-commerce companies, triggering worries about unhealthy business practices in the sector. Therefore, it is crucial to implement strict regulations to govern the operations of this social commerce. Consequently, business licensing is essential for various business models to establish a secure and healthy trade ecosystem through an effective electronic system. With the enactment of Minister of Trade Regulation Number 31 of 2023, regulations governing marketplaces and social commerce have been clarified, highlighting the differences in licensing requirements for social media organizers. As a result, two separate licenses must be submitted to the Ministry of Trade.<sup>23</sup> Therefore, TikTok Shop, an additional feature within the TikTok application, needs permission to operate as a marketplace and must separate itself from social media by submitting an application to the Ministry of Trade. This regulation aims to govern e-commerce, protect consumers, and ensure that business actors comply with applicable laws and regulations, particularly regarding business licensing, standardization of goods, price regulations, and user data protection. Consequently, business actors must understand how to conduct trade through electronic systems in a wise and fair manner to ensure that the trade ecosystem functions optimally for both businesses and the public as end consumers.

### **3.3 Maslahah Mursalah Perspective on the Regulation of Social Commerce in Indonesia**

*Maslahah Mursalah* is an etymological compound of two words: *Maslahah* and *Mursalah*. The term *Maslahah* is derived from the Arabic verb *sholaha-yasluhu*, pronounced *shulhan* or *maslahahat*, meaning "something that brings goodness." Meanwhile, *Mursalah* comes from the verb *arsala-yursilu-irsalan-mursilun*, pronounced *mursalun*, which means "sent" or "used."<sup>24</sup> These two terms combine to form *Maslahah Mursalah*, which represents the concept of *Maslahah* (goodness) that underpins Islamic law. It can also refer to an activity that embodies positive and helpful values. *Maslahah Mursalah* is defined as a method of examining the law by maximizing benefits and minimizing drawbacks.<sup>25</sup>

*Ushul* specialists (Islamic legal professionals) classified *Maslahah* into three categories. First and foremost, *Maslahah Dharuriyat* refers to benefits that are absolutely vital for human survival. This implies that human existence holds no significance if any of the five fundamental foundations of life are missing: religion, soul, reason, lineage, and wealth. Therefore, God requires humanity to strive to meet these essential needs. Any effort

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<sup>23</sup> Lestari Victoria Sinaga and Jupenris Sidauruk, "Kebijakan Peraturan Menteri Dalam Negeri Nomor 50 Tahun 2020 Dalam Mengatur Ijin Pelaku Bisnis Di E-Commerce Dan Social Commerce (Tiktok Shop)," *Jurnal Ilmiah Penegakan Hukum* 10, no. 2 (2023): 165–71, <http://ojs.uma.ac.id/index.php/gakkum>.

<sup>24</sup> Chaerul Uman. *Ushul Fiqih 1*. 1998. Bandung: Pustaka Setia

<sup>25</sup> Ziyadatus Shofiyah and M. Lathoif Ghozali, "Implementasi Konsep Maslahah Mursalah Dalam Mekanisme Pasar," *Al-Mustashfa: Jurnal Penelitian Hukum Ekonomi Syariah* 6, no. 2 (2021): 135, <https://doi.org/10.24235/jm.v6i2.8031>.

or action that leads to the loss or destruction of any of these five components is considered evil and is prohibited by Allah.

Second, *Maslahah Hajjiyyah* pertains to benefits that pertain to basic living necessities, which do not exceed the dharuri threshold. These benefits are not directly related to fulfilling the five fundamental requirements (dharuri), but rather indirectly support a fulfilling life. While fulfilling *Maslahah Hajjiyyah* does not directly harm the five essential aspects, it can have an indirect impact. For example, in the context of muamalah (transactions), it is permissible to buy and sell using a salam contract.

Third, *Maslahah Tahsiniyyah* encompasses actions that are appropriate and commendable, as supported by good traditions and discussed in the context of *mahasinul akhlak* (good characters). This benefit focuses on beauty and is inherently tied to kindness and perfection. An example of *Maslahah Hajjiyyah* involves muamalah activities, particularly the validity of buying and selling under a salam contract. Allah has established money as one of the means of human welfare in the world and has revealed that trade is a method to attain these benefits. Generally, in Islamic trade, transactions are conducted physically, either by delivering the ordered product during the transaction or not, but the nature of the object must be explicitly stated, either directly or indirectly, within a specified timeframe. *As-salam* transactions, like *al-istishna'* transactions, utilize a cash payment system or require prior payment, which can lead to delays in the delivery of products. Meanwhile, *al-istishna'* transactions involve an advance payment system.<sup>26</sup>

*As-salam* transactions, like other buying and selling methods, existed long before the arrival of the Prophet Muhammad (SAW). Today, as technology advances in all aspects of human existence, it simplifies various endeavors, unlike in the past when technology relied solely on natural factors (Gie). The internet initially served as a means of exchanging scientific and academic data, but it has now evolved into a vital component of everyday life, accessible from all corners of the globe. Internet technology has propelled the global economy into a new era, often referred to as the digital economy.<sup>27</sup> For example, trade is becoming increasingly dependent on electronic commerce, including e-commerce and social commerce.

The emergence of e-commerce as a transaction channel undoubtedly benefits numerous stakeholders, including consumers, manufacturers, and sellers. Business processes can be conducted online, saving both time and money. From an Islamic economic perspective, the e-commerce mechanism is similar to the *as-salam* contract. The *as-salam* transaction involves an upfront payment mechanism and deferred delivery of goods, providing clients with greater flexibility and ease in their dealings. E-commerce enhances customer experience by offering convenience and comfort.

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<sup>26</sup> Trisna Taufik Darmawansyah and Miko Polindi, "Akad As-Salam Dalam Sistem Jual Beli Online (Studi Kasus Online Shopping Di Lazada.Co.Id)," *Jurnal Aghinya Stiesnu Bengkulu* 3, no. 1 (2020): 20–39.

<sup>27</sup> Khadijatul Musanna, "E-Commerce Practice in the Light of Mashlahah Mursalah," *Journal of Islamic Economics Lariba* 8, no. 2 (2022): 331–40, <https://doi.org/10.20885/jielariba.vol8.iss2.art12>.

E-commerce transactions represent a type of *Maslahah* (benefit/convenience) that falls within the category of *Maslahah Hajjiyyahin* terms of *muamalah* activities, such as purchasing and selling *bai' as-salam*.<sup>28</sup> E-commerce transactions are classified as *Maslahah Hajjiyyah* because, if not implemented in human life, they do not directly harm the five essential elements: religion, soul, reason, lineage, and property.

As e-commerce expands in Indonesia, there is a growing need for regulations to support its development. Regulations for e-commerce, particularly in the realm of social commerce, are being established with the aim of effectively and firmly governing the operation of the electronic commerce system. The creation of regulations for social commerce also seeks to foster a more conducive competitive environment for trade in Indonesia and to strengthen the presence of local MSMEs (Micro, Small, and Medium Enterprises). Both consumers and producers have the right to benefit without compromising their respective interests. Producers primarily provide information to consumers to build trust and ensure their comfort, whether regarding the commodities themselves or as users of the purchased goods.<sup>29</sup>

Islamic law regulates the relationship between consumers and business actors. Essentially, Islam mandates that business actors pay close attention to ethical principles in their operations, as these principles can foster business development and success. The majority of ulama (*Jumhur ulama*) accept the Al-Qur'an, sunnah, *ijma'*, and *qiyas* as sources of Islamic law, which also serve as foundations for trade law in Islam.

Minister of Trade Regulation Number 31 of 2023 clearly defines business models in marketplaces and social trading, aiming to benefit individuals by facilitating guidance and oversight of the social trading system. However, some perceive the establishment of this regulation as lacking resolve in its execution and overly hasty. Realizing benefits requires avoiding harm and adhering to sharia principles.

Every action should aim to uphold the five primary goals of sharia (*al-dharuriyah al-khamsah*), which include preserving religion, soul, reason, offspring, and property. Maintaining these five aspects is essential because they significantly influence the quality of human life by creating advantages and avoiding harm. The regulations in Indonesia that prohibit social commerce do not align with *Maslahah Mursalah*, as they fail to satisfy two of the five objectives of sharia (*al-dharuriyah al-khamsah*).

First, concerning the preservation of the soul (*hifz al-nafz*), the regulations prohibiting social commerce in Indonesia do not fully align with the principle of safeguarding the soul. They fail to effectively address regulatory challenges, cater to the needs of MSMEs and consumers, and ensure transaction security. The government must review its prohibition policy and consider a more balanced approach, such as implementing strict regulations to protect user data and enhance the MSME ecosystem.

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<sup>28</sup> Hassan Shakeel Shah, "E-Commerce on The Study of Maslahah Mursalah (A Review From an Islamic Economic Perspective)" 7, no. 1 (2022): 17–28, <https://journal.iain-manado.ac.id/index.php/TJEB/index>.

<sup>29</sup> Nurul Auliyah, "Analisis Maslahah Mursalah Terhadap Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen Dalam Transaksi Jual Beli Online," *Journal of Economic Perspectives* 2, no. 1 (2022): 1–4.

Second, regarding the preservation of assets (*hifzh al-mall*), the regulations prohibiting social commerce do not entirely align with the goal of asset preservation. While the primary aim of the prohibition is to protect consumers from monopolistic practices, the merger of companies like TikTok and Tokopedia creates the potential for monopolistic behavior in the e-commerce industry, making it difficult for other companies to compete in terms of wealth and assets.

According to researchers, the proper and firm implementation of social commerce prohibition regulations in Indonesia is crucial for the welfare of all stakeholders, including business actors. Given the government's role in achieving sharia goals (*al-dharuriyah al-khamsah*), it is necessary to respond to the current situation where the enforcement of regulations prohibiting social commerce is insufficient. The government needs to take decisive action and enhance supervision of social commerce. Specifically, the government should license TikTok as a social media platform rather than as a marketplace, as stated in Minister of Trade Regulation Number 31 of 2023, to preserve the electronic trading system and promote healthy and safe competition

#### **4. CONCLUSION**

This research concludes that there is a pressing need for social commerce regulation in Indonesia, as local MSMEs have expressed concerns about a notable decrease in turnover in recent years, which they attribute to the presence of social commerce. As a result, business actors are urging the government to address this issue. In response, the government, particularly the Minister of Trade, has issued a new regulation. This regulation amends Minister of Trade Regulation Number 50 of 2020, which pertains to Business Licensing, Advertising, Development, and Supervision of Trading Business Entities Through Electronic Systems. Minister of Trade Regulation Number 31 of 2023 introduces several changes aimed at addressing key regulatory points related to e-commerce and social commerce in Indonesia. The regulation aims to facilitate e-commerce in the form of *Maslahah* (providing benefits/convenience) while protecting consumers and ensuring that business actors engaging in online dealings comply with applicable regulations. However, the government's approach to issuing this policy has been criticized as inappropriate and hasty, particularly given the recent developments involving TikTok's collaboration with Tokopedia, which continues to operate as a social commerce platform—a combination of social media and e-commerce. To address this issue, TikTok must submit an application for a business license as a marketplace, distinct from its social media application, to the Ministry of Trade, as outlined in Minister of Trade Regulation Number 31 of 2023. In the context of *Maslahah Mursalah*, effective supervision and decisive action against social commerce are essential efforts to preserve the soul (*hifzh al-nafs*) and property (*hifzh al-mall*) in order to create a healthy electronic trading system.

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