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# The Urgency Regulation Prohibition of Social Commerce in Indonesia From The Perspective Maslahah Mursalah

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## Abstract

This research aims to determine the importance of social commerce regulations, explore the development and implementation of these regulations in Indonesia, and understand Maslahah Mursalah's views on these regulations. The current rapid growth of digital technology has driven great progress in various scientific disciplines, particularly in the economic sector, where business actors, especially MSMEs, are starting to participate in the e-commerce space. With the emergence of online trading trends that use social media as the main platform (social commerce), government awareness of the growth potential of e-commerce has encouraged the government to adopt strict and enforceable regulations. This scientific study uses normative juridical research methodology, specifically focussing on secondary data sources. These sources include primary legal materials, such as statutory regulations (legislative approach), and secondary legal sources accessed through library sources. The study revealed that the Minister of Trade, Zulkifli Hasan, has issued new regulations, namely 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 help Micro, Small, and Medium Enterprises (MSMEs), clarify social commerce operations, and foster a strong e-commerce ecosystem. However, some view the government's issuance of this regulation as lacking substance and haste. Mursalah's problem is that government regulations, specifically Minister of Trade Regulation Number 31 of 2023, only address a few aspects of 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 a variety of tasks. We can create extremely accurate information by correctly employing technology.<sup>1</sup> The fast development of technology has had a significant influence on human lives in a variety of disciplines. One of the most significant developments in modern technology is the increased speed of Internet connection. By July 2023, Indonesia had 212.35 million Internet users, making it Southeast Asia's seventh biggest country with the most Internet users. The growing number of Internet users has had an impact on the rapid rise of digital companies in Indonesia. According to the January 2024 startup ranking report, Indonesia has 2,562 startups, placing it as the world's sixth largest.

The economic impact of Internet technology has been substantial. The digital economy, a new age in the modern economy, has created new prospects for business, commerce, and trade. Distance is no longer an impediment to conducting business because to the usage of Internet technology. Agreements on the internet can be called electronic transactions as stipulated in Article 1 paragraph (2) of Law Number 11 of 2008 concerning

<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 Information and Transactions, that electronic transactions are legal actions. Information and Electronic Transactions, that electronic transactions are legal actions conducted using a computer, computer network, and/or other electronic media.<sup>2</sup> The fast advancement of Internet technology is driving the expansion of trade, commonly known as electronic commerce or e-commerce. In addition to e-commerce, there is another developing trend in online commerce called as social commerce. Social commerce is a commercial activity that takes place mostly on social media platforms such as Facebook, Instagram, and TikTok.

Trading operations on social media in Indonesia give and offer a variety of possibilities for sellers and buyers to conduct transactions without needing to meet in person. TikTok is one of the most popular applications, with an additional feature called TikToks Shop, which functions as a hybrid of social networking and a marketplace. TikTos is known to only have business permissions as a social networking platform, not as a marketplace, and TikToks can add extra services, such as TikTots Shop, because there are no restricting laws under Indonesian legislation. On the TikTok app, the vendor can engage in live or live sales activity with the buyer via the comments column, and there is a yellow basket to assist transactions between sellers and buyers.<sup>3</sup> So there are no prohibitions on businesses trading in electronic media to enhance revenue while also providing customers with the convenience and ease of making transactions via cellphones, laptops, or other electronic media.<sup>4</sup>

However, the presence of the additional features of TikTok Shop in the app is problematic. In view of this, it has become obligatory for the government to strengthen the role of the Ministry of Commerce and the Competition Oversight Commission (KPPU) in monitoring the flow of trade, especially in electronic media, such as the emergence of various applications in Indonesia, so it is necessary to strictly regulate to classify such applications that each application should have a clear business license to establish healthy and fair trade for every entrepreneur, whether it is online or offline marketing. As a matter of fact, the current regulation is felt less strict, only prohibiting social commerce organisers from facilitating transactions on their electronic systems. In fact, there are still many applications of social media organisers that facilitate such things as TikTok Shop, which has two functions at the same time: social media and marketplace. Such applications may pose a threat to local actors, micro, small, and medium-sized enterprises, with the emergence of predatory pricing, which is an attempt by companies to sell prices below the cost of production to shut down other competitors' businesses that is then refinanced when

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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, Seerti Halnya," *Jurnal USM Law Review* 5, no. 2 (2022): 553–68.

another competitor's business has been terminated.<sup>5</sup> This leads to unhealthy business competition in the ecosystem of trade, so it is necessary to understand the ethical way of doing good business for entrepreneurs to comply with the principle of fairness in the business world.

And in the context of social commerce regulation, an understanding of the *mursalah* can help in defining rules and guidelines that are consistent with Islamic principles. In Islam, the concept of social commerce or trade through social media and other digital platforms is not specifically discussed in the Quran or the Hadith. However, the general principles in Islam relating to business and trade can provide guidance for the practice of social trade. That is, business transactions should be implemented without harming or harming either party, should not contain speculation (*maysir*), should not be ambiguous (*gharar*), and should not have any interest. As the Qur'an explains in QS. al-Baqarah: 275, "Allah has permitted trade and forbidden interest." This includes ensuring that digital transactions do not violate Shariah law and that the transaction does not threaten the social or economic well-being of the people.

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, Ifitah Dian, and Mia Rosmiawati (2023) entitled "Normative Problems in Trade Minister's Regulation No. 31 Year 2023 Relating to the Social-Commerce Ban on Tiktok Shop," 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 explaining the effect of such regulation on entrepreneurs and affiliates on social networks.<sup>6</sup>

In a study conducted by Andriansyah and Muthi'ah Maizaroh (2023) entitled "Revolution of Consumer Protection Law: Indonesia's Preparedness to Welcome the Presence of Social Commerce," The study focused on building guarantees of consumer protection on social commerce according to the positive laws and their weaknesses. The method in this research is doctrinal and used to analyse social commerce settings with e-commerce as well as consumer protection legislation reforms.<sup>7</sup> In a study conducted by Zahran A Mahran and M Hasan Sebyar (2023) entitled "The Effect of the Minister of Trade Regulation (PERMENDAG) Number 31 of 2023 on the Development of E-Commerce in Indonesia." Using a method of normative jurisprudence approach. The study

<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, Ifitah 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>.

explains It is important to understand the applicable regulations, maintain consumer trust, and operate 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 said that this study is different from the previous study. The existence of developments and social facts close between the use of social media and the conditions of society give the value of urgency to this research. The effort to reform the law on social commerce is a step towards solving the issue. Based on the above description, the problems in this study are: (1) what is the urgency of the existence of social commerce ban regulation; (2) how the development and implementation of the regulation of social trade ban in Indonesia; and (3) how the perspective of the Mursalah is towards social trade regulation in Indonesia.

## 2. METHOD

This study employs a normative jurisprudence technique, which is research that investigates secondary data or library studies as a starting point by reviewing legislative rules and library resources relevant to the topic. This normative legal approach employs the statute approach, also known as the legislative approach, in which all laws and regulations relating to the legal issues under consideration are examined. The research methodology used in this study is descriptive analysis, which entails describing the regulation of social commerce prohibition. The data utilised in this study is secondary data taken from previously existing sources and gained through library investigations. Secondary data in this study includes primary legal information, namely legislative laws, such as the Ministry of Commerce Regulation No. 31 Year 2023, which governs business license, advertising, construction, and monitoring of business actors in trade using electronic systems. Secondary sources of law include books, scientific publications, and journals. Data gathering approaches are obtained by examining secondary data from libraries, which then executes the inventory of 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 conversations about the urgency of regulating the ban of social commerce in Indonesia. Then it is poured into logical and methodical descriptions, examined to provide an explanation, and conclusions derived from general to specific. In this study, the author will explain, derive, and evaluate the facts in order to present it clearly.<sup>9</sup>

## 3. RESULTS AND DISCUSSION

### 3.1 The Urgency Existence Regulation Prohibition Social Commerce

In the trading activities of goods or services carried out by business actors can be done offline by providing shops or shophouses in shopping centers, but along with the development of technology and information that is getting faster and easier, marked by the emergence of E-commerce or electronic commerce, it makes business actors also open online stores, one of which is through a marketplace to expand marketing so that it can be

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<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)."

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

reached by all Indonesian people and the world to make it easier to conduct transactions electronically.<sup>10</sup> In addition, business actors also utilize social commerce or called social media as a means of promotion, so that business actors need to comply with every applicable regulation both laws and regulations in a marketplace chosen as a place to open an online store.

The emergence of social commerce had an impact on the quick rise of market share, which was driven by the high number of electronic media users. As a result, we need legislation that can protect public commercial operations within a legal framework. In international law, social commerce is frequently referred to as a subset of e-commerce by various governments. Social commerce may be understood we may define **social commerce** as a social media organiser that has special features, menus, and/or facilities that allow merchants to publish offers for products and/or services.<sup>11</sup> The following image depicts the relationship between social commerce and e-commerce activity on social media.

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



*Source: Secondary data, processed (2024)*

The illustration above demonstrates that social trade is the intersection of e-commerce, social media platforms, and the users who will become consumers. So, it is clear that social commerce is a new breakthrough in the development of e-commerce.

Regulations for banning social commerce began with the existence of economic activity on a digital platform called TikTok Shop. It began with complaints from entrepreneurs that Abang's markets had decreased turnover. They assume that consumers are starting to switch to e-commerce that offers low prices as well as practical gains by merely transacting online without having to come to offline markets. For that, the

<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>.

<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)."

businessmen asked the government to take a stance to immediately close the economic activity on the TikTok Shop platform in order to improve the conditions of UMKM and businessmen in the Abang Land Market, who suffered a decline in turnover. From this issue, the government, especially the Minister of Commerce, with his discretion, issued a ministerial regulation, which was approved on September 26, 2023, as a form of response to complaints of local UMKMs and entrepreneurs in the Brotherland Market.

In addition, local UMKM entrepreneurs complain about the acquisition of social commerce features provided by the company TikTok, which, if it becomes a seller or affiliate, will get a commission of 10% on the side of the company.<sup>12</sup> And this is the government began to make further observations on the conditions experienced by local MSME business actors due to the existence of social commerce features that are easily accessible through live TikTok which can attract a lot of consumer interest when playing social media and collaborations with content creators that have caught the attention of Indonesia's millennial generation.<sup>13</sup> With the presence of content as well as live TikTok that smells promotions related to products that favour the sluggish price of the market, this makes local UMKM increasingly overwhelmed, especially since there are public figures that have a lot of followers and even participate in the endeavours also in TikTok Shop. Those who are in the high strata live, such as the artists, influencers, entrepreneurs, and skin specialists who have previously had an economic background above and have many followers and fans, jumped to take advantage of the sales facilities in TikTok; either they sell their own products or become affiliates of the merchants who cooperate with them, so they get a commission. These opportunities automatically generate a substantial income, fueled by their fame and the number of their followers. Such incidents indirectly lead to a rich person becoming richer, and for market traders who do not have such privileges as they will have difficulty weighing it, not rarely of them also try to follow the way of selling live and burning money or holding massive promotions, but still the questionnaire of selling goods that are practical remains low compared to the sale of the already famous person.

Following this incident, some have attempted to work together with individuals who have a large following, commonly referred to as affiliates. They collaborate by hiring promotional services and paying promotional fees to the affiliates. The problem that often arises in this situation is that not all traders have enough money to pay affiliates, so they cannot do. The government believes that if the Minister of Trade Regulation Number 31 of 2023 remains unissued, it will lead to a significant overlap. issued. The issuance of this Minister of Trade Regulation aims to enhance the competitiveness of trade in Indonesia and fortify the position of local MSMEs. With the issuance of this regulation, everyone can continue to promote on TikTok. However, for online buying and selling, they should

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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> Taupiqurrahman Taupiqurrahman 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>.

continue to use the marketplace that existed long before the emergence of TikTok Shop. This is to ensure that the functions of social media and buying and selling do not overlap.<sup>14</sup>

The next reason the government issued the Minister of Trade Regulation was because unhealthy things were happening in the buying and selling system. The TikTok Shop offers thrifting goods at more affordable prices compared to general prices, as the practice involves importing used goods from overseas and selling them to Indonesia under well-known international brands. This thrifting has become more economical, and the price and good model make consumers interested in buying it. This phenomenon has resulted in an influx of imported used goods entering Indonesia, making Indonesia's own products, particularly those belonging to local MSMEs, less popular. Apart from that, the driving factor behind the large number of people interested in thrifting goods is that society's fashion needs are quite high, while the models of thrifting clothes are more contemporary, so based on data from katadata.co.id, 73% of people prioritise their appearance through the application of modern fashion. For this reason, the government issued the Minister of Trade Regulations to provide protection and a legal framework for local MSME business actors. Government decisions included in the Minister of Trade Regulations, they fall under different regulations, so that the government's indirect aim is to minimise bad events that might occur 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 serves as the basic framework for regulating commerce in Indonesia using electronic technologies. However, this legislation solely addresses trading via electronic systems in two provisions, provisions 65 and 66.<sup>16</sup> Aside from that, regulations regarding trading via electronic systems are also regulated in several other regulations, including Law Number 11 of 2008, which has been amended to become Law Number 19 of 2016 concerning information and electronic transactions; Government Regulation Number 82 of 2012 concerning the implementation of electronic systems and transactions; Government Regulation Number 80 of 2019 concerning trading via electronic systems; and Regulation of the Then, Minister of Trade Regulation Number 50 of 2020 governs business license, advertising, development, and supervision of business actors dealing via electronic systems.

The Republic of Indonesia's Law No. 7 of 2014 concerning Trade and its Implementing Regulations, one of which is the Government Regulation No. 80 of 2019 concerning Trading Through Electronic Systems, govern the conduct of electronic transactions both domestically and internationally, with Indonesia serving as the broad market. With this rule, if corporate actors fail to comply with Indonesian laws or standards,

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

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

<sup>16</sup> Dewa G. Prasetya, Anak Agung S L Dewi, Ni Made P Ujjanti. "Tinjauan Yuridis Industri E-Commerce Dalam Melakukan Kegiatan Transaksi Online." *Jurnal Konstruksi Hukum* 3, no. 2 (2022). 365-370. <https://doi.org/10.22225/jkh.3.2.4838.365-370>



conflicts would occur, potentially causing harm to customers. If the conditions required for e-commerce transactions are not met, such as violating the provisions governing the accuracy of information provided to consumers, business actors will violate Article 80 of the Republic of Indonesia's Government Regulation Number 80 of 2019 concerning Trading via Electronic Systems. In this situation, criminals who are found to have violated will face punishments including the termination of their business licence and registration on the trade blacklist. His firm will be rigorously scrutinised and added to a trade watch list.

In regulating business actors in electronic trading, 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 licence to carry out PMSE business activities." In this sense, business players include persons or legal identities, whether in the form of legal entities or non-legal entities, who can be both domestic and international business actors functioning in the PMSE sector. This item needs a particular sort of business authorisation, known as a License Trading Business via Electronic Systems (SIUPMSE), for business actors who undertake trading operations using Electronic Systems (PMSE).

This registration and licensing is necessary to ensure legal certainty and clarify the legal responsibilities of business entities, as well as to carry out technological control and receive reports or complaints from the public. One of the government's main objectives in requiring e-commerce players to register with the electronic system is to protect all stakeholders, including economic actors and consumers. Aside from that, the electronic registration system also serves as a preventative measure against problems such as online fraud because consumers can more easily identify commercial actors through government-provided websites.<sup>17</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 replacement of Minister of Trade Regulation Number 31 of 2023 with Minister of Trade Regulation Number 31 of 2023 has led to notable 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 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 a trader who owns, creates, and manages their own website or application. The marketplace provides facilities for part or all of the transaction process in 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 price or service to consumers.

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<sup>17</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>.

use daily deals, an electronic system that sells discount coupons or other convenient facilities as a means of payment for goods and services, while social commerce, a social media organizer, offers specific features, menus, or facilities for offering goods and services.<sup>18</sup>

The previous regulations regulated in the Minister of Trade Regulation Number 50 of 2020 were revoked and replaced by the Minister of Trade Regulation Number 31 of 2023, bringing many significant differences, so that several things that had not previously been regulated were later regulated in the Minister of Trade Regulation Number 31 of 2023, including:<sup>19</sup>

- a) The Minister of Trade Regulation Number 50 of 2020 lacks clear definitions for trade organisers using electronic systems, including online retail, marketplaces, classified ads, platforms, daily deals, and social commerce. This has been governed by the general principles of Article 1 Numbers 12-17 of the Minister of Trade Regulation Number 31 of 2023.
- b) The Minister of Trade Regulation Number 50 of 2020 does not address PPMSE's responsibility to prevent data exploitation by linked enterprises and promote healthy business competition. Article 13 Paragraph (3) of Minister of Trade Regulation Number 31 of 2023 governs this topic.
- c) Minister of Trade Regulation Number 50 of 2020 lacks specific regulations on business license requirements for domestic and international businesses. This is specified in Articles 3-22 of Minister of Trade Regulation No. 31 of 2023.
- d) Minister of Trade Regulation Number 50 of 2020 does not yet address the ban of social commerce operating as producers. This is covered in Article 21 Paragraph (2) of the Minister of Trade Regulation Number 31 of 2023.
- e) Minister of Trade Regulation Number 50 of 2020 does not yet address the restriction of social commerce for electronic transactions. This is covered in Article 21 Paragraph (3) of the Minister of Trade Regulation Number 31 of 2023.
- f) The Minister of Trade Regulation Number 50 of 2020 does not establish minimum pricing for foreign items offered in Indonesia via cross-border e-commerce platforms. Article 19 of the Minister of Trade Regulation No. 31 of 2023 governs this.
- g) Minister of Trade Regulation Number 50 of 2020 does not include required, forbidden, restricted, or taxed items. This is covered in Article 21 Paragraph (1) of the Minister of Trade Regulation Number 31 of 2023.
- h) Minister of Trade Regulation Number 50 of 2020 does not yet specify standards for goods and services, including registration numbers, halal certificate numbers, product registration numbers for security, safety, health, and the environment, and permit numbers for cosmetic, medicinal, and food products in compliance with statutory

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<sup>18</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>19</sup> Mahran and Sebyar, "Pengaruh Peraturan Menteri Perdagangan (PERMENDAG) Nomor 31 Tahun 2023 Terhadap Perkembangan E-Commerce Di Indonesia."

provisions. This is controlled by Article 11 Paragraph (1) of the <sup>3</sup> 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 businesses, as well as trading businesses using domestic electronic systems, protect consumers, and encourage the development of trade using electronic systems while taking technological developments into account. The legislation is dynamic in order to foster a fair and healthy commerce ecology, limiting data leaks and harmful company competitiveness.<sup>20</sup>

The TikTok Shop application serves as both a social media platform and a marketplace, also known as social commerce, facilitating the promotion and sale of goods and services on a single platform. It offers convenience in transactions by eliminating the need to switch between applications, and incorporates a live shopping feature that <sup>3</sup> allows consumers to directly access product information from the seller.<sup>21</sup> According to Article 1 Paragraph 17 of the Minister of Trade Regulation Number 31 of 2023, social media falls under the social commerce category. This regulation restricts social media organisers to providing specific features, menus, and facilities, and only allows them to promote goods and services. It also prohibits social commerce from facilitating transactions between sellers and buyers. <sup>2</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. So social media and marketplaces must be separated to prevent competition and leaks of personal data that are classified as inadvertent threats, namely internal data leaks that are accidental or negligent and intentional threats from external factors such as data hacking through cyber attacks such as hacking, viruses, etc.

In terms of commercial rivalry, <sup>2</sup> the TikTok Shop function in the TikTok application is not an e-commerce medium that has been granted authorisation to operate as a marketplace, such as Shopee, Tokopedia, Lazada, Blibli, Bukalapak, and others. Aside from that, TikTok Shop business actors tend to use a dominant position, as in articles 20 and 21 of Law Number 5 of 1999 concerning Prohibition of Monopoly Practices and Unfair Business Competition, by carrying out predatory pricing, which has the potential to set very low prices "dumping" in the product creation process (goods) and eventually can make business actors control 50% of the market share, giving rise to monopolistic activities.<sup>23</sup> As a result, TikTok must seek a business licence as a marketplace separate from its social media platform to avoid unhealthy competition with other applications.

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<sup>20</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>21</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>.

<sup>22</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>23</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.

TikTok Shop reappeared on December 12, 2023, following the release of Minister of Trade Regulation Number 31 of 2023, which required TikTok to work with Tokopedia as a marketplace. Because Tokopedia has signed an exclusive TikTok Shop deal for 340 million, TikTok has invested 840 million in Tokopedia and issued a promissory note worth 1 billion, for a total of \$1.5 billion. TikTok purchased 75.01% of Tokopedia's stock through an agreement between TikTok and PT. GoTo Gojek Tokopedia Tbk (Goto) with the goal of expanding, strengthening, and encouraging the growth of Indonesia's digital economy, with a focus on providing benefits to users and business actors, particularly micro, small, and medium businesses.

Tokopedia currently maintains and operates the TikTok Shop function, which has returned to the TikTok app. The implementation of Minister of Trade Regulation Number 31 of 2023 is deemed improper and hasty since the TikTok Shop closed on October 4, 2023. The TikTok Shop may now operate normally by working with Tokopedia, which has a marketplace license that is still integrated into a single application. According to the Momentum Works research, Tokopedia is in second place behind Shopee, with 35% market share. Meanwhile, with the purchase of Tokopedia, TikTok's market share in Indonesia is expected to reach 28.1%.

By joining these two companies, it creates the possibility of a monopoly in the e-commerce industry because TikTok and Tokopedia are two large players or companies in this industry that control most of the e-commerce market share in Indonesia, making it difficult for other e-commerce companies to compete. This has triggered concerns about unhealthy business competition in the e-commerce industry. Therefore, it is important to have strict regulations to regulate the running of this social commerce.

Therefore, business licensing is necessary for a variety of business models in order to establish a trade ecosystem through a secure and healthy electronic system. With the establishment of Minister of Trade Regulation Number 31 of 2023, it regulates marketplaces and social commerce, namely that social media organisers have differences in licensing, so there must be two, which must be submitted to the Ministry of Trade.<sup>24</sup> Therefore, TikTok Shop, an additional feature within the TikTok application, needs permission to function as a marketplace and must separate itself from social media by submitting an application to the Ministry of Trade. This regulation aims to regulate e-commerce, protect consumers, and ensure business actors comply with laws and regulations. -laws that apply, especially in terms of business licensing, standardisation of goods, price regulations, protection of user data, etc. Therefore, 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 business actors and the public as final consumers.

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<sup>24</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>.

### 3.3 Maslahah Mursalah Perspective on Social Commerce Regulation in Indonesia

Maslahah Mursalah is an etymological compound of two words: Maslahahah and Mursalah. The name Maslahahah is derived from the Arabic verb *sholaha-yasluhu*, which is pronounced *shulhan or maslahahat* and meaning "something that brings goodness." Meanwhile, the name Mursalah is derived from the verb *arsala-yursilu-irsalan-mursilun*, which is pronounced *mursalun* and meaning "sent or used (used)".<sup>25</sup> These two terms combine to form "Maslahahah Mursalah," which represents the idea of Maslahahah (goodness) that underpins Islamic law. It can also refer to an activity that has positive (helpful) values. Defines Maslahahah Mursalah as a way of examining the law by maximising advantages and minimising drawbacks.<sup>26</sup>

Ushul specialists (Islamic legal professionals). First and foremost, *Maslahahah Dharuriyat* is a benefit that is absolutely vital for human survival. This indicates that human existence has no significance if one of the five main foundations of human life is missing: religion, soul, reason, heredity, and riches. As a result, God requires humanity to endeavour to meet these fundamental requirements. Any effort or activity that causes the loss or destruction of any of the five components is evil, and Allah bans it.

Second, *Maslahahah Hajjiyyat* is a benefit in which people's basic living necessities do not exceed the dharuri threshold. The advantage is not directly related to meeting the five fundamental requirements (dharuri), but rather indirectly, such as in items that make it simpler to live a fulfilling life. Fulfilling *Maslahahah Hajjiyyah* in human life does not directly hurt the five essential aspects, but it might have an indirect impact. For example, with muamalah, it is allowed to purchase and sell using a salam contract. Third, *Maslahahah tahsiniyyah* uses everything that is suitable and proper, as supported by good traditions and discussed in the mahasinul akhlak section. This benefit focusses on beauty; its nature is just for kindness and perfection.

One example of *Maslahahah Hajjiyyat* concerns muamalah activities, especially the validity of buying and selling under a salam contract. Allah has made money one of the causes of human welfare across the world. Allah has also revealed that trading is one method to reap these benefits. In general, we find that in Islamic trade, transactions are carried out physically, either by presenting the ordered product during the transaction or not, but the object's nature must be expressly stated, either directly or indirectly, within a set timescale. As-salam transactions, like al-istishna' transactions, employ a cash payment system or demand prior payment, but can cause delays in the delivery of products. Meanwhile, al-istishna transactions use an advance payment system.<sup>27</sup>

As-salam transactions, like other purchasing and selling methods, existed long before the Prophet Muhammad SAW came. Currently, when technology advances in all aspects of human existence, it simplifies all human endeavours, as opposed to the past, when

<sup>25</sup> Saerul Uman. *Ushul Fiqih 1*. 1998. Bandung: Pustaka Setia

<sup>26</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>.

<sup>27</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.

technology was exclusively dependent on natural factors (Gie). The internet began as a way of exchanging scientific and academic data, but it has now evolved into a vital component of everyday life, accessible from all over the world. Internet technology has propelled the global economy into a new era, dubbed as the digital economy.<sup>28</sup> For example, trade is becoming increasingly dependent on electronic commerce, such as e-commerce and social commerce.

The existence of e-commerce as a transaction channel undoubtedly helps numerous stakeholders, including consumers, manufacturers, and sellers. Business procedures may be conducted out via the internet, saving both money and time. From an Islamic economic standpoint, the e-commerce mechanism is similar to the as-salam contract. The as-salam transaction comprises an upfront payment mechanism and postponed delivery of products, giving clients greater transaction flexibility and ease in their dealings with others. E-commerce helps customers by offering ease and comfort.

E-commerce transactions are a type of Maslahahah (benefit/convenience) that falls within *Maslahahah Hajjiyyat* in terms of muamalah activities, such as purchasing and selling bai' as-salam.<sup>29</sup> E-commerce transactions are classified as *Maslahahah Hajjiyyat* because, if not carried out in human life, they do not directly harm the five essential elements (religion, soul, reason, lineage, and property).

As e-commerce expands in Indonesia, it necessitates more regulations to maintain its growth. Regulations for e-commerce, particularly social commerce, are being formed with the aim of effectively and firmly regulating the operation of the electronic commerce system. The formation of regulations on social commerce is also in the interests of making trade competition in Indonesia more conducive and strengthening the existence of local MSMEs themselves. Both consumers and producers have the right to benefit without endangering their respective interests. Producers primarily disclose information to consumers to gain their trust and comfort, either as a commodity or as users of the purchased goods.<sup>30</sup>

Islamic law regulates the relationship between consumers and business actors. In essence, Islam mandates that business actors pay more attention to ethical principles in running their businesses, because ethical principles can encourage 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 are also sources of trade law in Islam.

The Minister of Trade Regulation Number 31 of 2023 clearly defines business models in marketplaces and social trading, aiming to benefit humans by facilitating guidance and supervision of the social trading system. However, some perceive the establishment of Minister of Trade Regulation Number 31 of 2023 as less resolute in its

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<sup>28</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>.

<sup>29</sup> Hassan Sha'el 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>30</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,

execution and overly expeditious. Realizing benefits necessitates avoiding damage and adhering to sharia principles.

Every action aims to uphold the five primary goals of sharia (*al-dharuriyah al-khamsah*), which include preserving religion, soul, reason, offspring, and property. Maintaining these five things is absolutely necessary because it will greatly influence the benefit 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 meet two of the five objectives of sharia (*al-dharuriyah al-khamsah*).

a) Maintaining the soul (*hifzh al-nafz*),

Regulations prohibiting social commerce in Indonesia are not fully aligned with the principle of preserving the soul (*hifzh al-nafz*), as they fail to effectively address regulatory challenges, fail to cater to the needs of MSMEs and consumers, and fail to ensure transaction security. The government must review its prohibition policy and consider a more balanced approach, such as strict regulations to protect user data and develop the MSME ecosystem.

b) Maintaining assets (*hifzh al-mall*),

The establishment of regulations prohibiting social commerce in Indonesia does not align entirely with the preservation of assets (*hifzh al-mall*), as the primary goal of the prohibition is to safeguard consumers from monopolistic practices. However, in some cases, the merger of two companies (TikTok and Tokopedia) creates the possibility of a potential monopoly in the e-commerce industry, which makes it difficult for other e-commerce companies to compete in terms of wealth or assets.

According to researchers, the proper and firm implementation of social commerce prohibition regulations in Indonesia is crucial for the welfare of humans, including business actors. As is the idea of the government's role in achieving sharia goals (*al-dharuriyah al-khamsah*), responding to the situation where the implementation of regulations prohibiting social commerce in Indonesia is less strict, therefore the government needs to take firm action and carry out further supervision of social commerce. Specifically, the government should license TikTok as a social media platform, not 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 social commerce's presence. Therefore, business actors are urging the government to address this issue. The government, particularly the Minister of Trade, has issued a new regulation. This is an amendment to the Minister of Trade Regulation Number 50 of 2020, which pertains to Business Licensing, Advertising, Development, and Supervision of Trading Business Entities Through Electronic Systems. The Ministry of Trade Regulation Number 31 of 2023 includes several new changes aimed at addressing the main regulatory points related to e-

commerce and social commerce in Indonesia. Lation aims to regulate e-commerce in the form of *Maslahah* (providing benefits/convenience) and protect consumers and ensure that business actors who use O-dealings comply with applicable regulations. However, the government's way of issuing this policy is considered inappropriate and seems hasty in ratifying the Minister of Trade Regulation, because in the latest discovery currentl, TikTok in collaboration with Tokopedia, which is still running as social commerce, namely 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 Ministry of Trade Regulation Number 31 of 2023. In *Maslahah Mursalah*, supervision and firm action against social commerce is one of the efforts to preserve the soul (*hifzh al-nafs*) and property (*hifzh al-mall*) to create a healthy electronic trading system.

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