

Research Article

Regulations on the Registration System of Marketing Affiliation Program on Electronic Contracts for Minors without Parental Consent

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Abstract.

Many of the participants of marketing affiliation programs are children, and their parents have not approved of their participation in the marketing affiliation program. This allegedly occurred because the information system of the application organizer in the affiliation program did not accommodate the alignment of legal requirements, which is one of the conditions for the validity of a contract. The purpose of this study is to normatively elaborate on the general practice of organizing marketing affiliation programs in Indonesia, particularly in identifying the legal loopholes for the program participants who happen to be underage and without parental permission. This study concluded that the registration system for marketing affiliation programs has loopholes that do not prevent participation in marketing affiliation programs by underage participants who do not have parental permission. Given that the loophole indirectly ignores the conditions of capacity, this will almost certainly affect the existence of electronic contracts agreed upon by the parties. Information system operators in marketing affiliation programs must create a more accommodating system to meet these legal requirements' full scope. The system can be developed, particularly during the registration phase, so that the system has a filtering mechanism for immature registrants. As a result, changes to regulations governing electronic transaction practices are required to ensure that electronic transaction operators develop an electronic transaction system that meets the requirements for adult age limits and parental consent.

Keywords: Affiliate Marketing, Electronic Contract, Minors, Parental Consent

1. Introduction

One of the classic problems that has become a scourge among Indonesia's approximately 65 million Micro, Small and Medium Enterprises (MSME) units is in the promotion and marketing. As the result, in this age of technological globalization, many of these business actors are competing to innovate in promotion and marketing. One of the most common things to do is to use e-marketing, also known as internet marketing, which is an effort to market a product or service through or through the media. The

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term e-marketing is often associated with the word electronic, so it is commonly interpreted as an electronic marketing activity involving the creation of advertising products, searches, prospects, or buyers via the internet or cyber networks. Internet marketing, also known as e-marketing, encompasses activities such as web design, digital banner advertising, company promotion via information search engines, electronic mail or e-mail (e-mail), advertising via e-mail (advertising), affiliated marketing (marketing affiliation), and interactive advertising.[1] This condition has an indirect impact on the emergence of online businesses, which are influenced by the widespread use of the internet in society, including business actors. This also demonstrates the shift from traditional to online business transactions. The process of sellers and buyers transacting through the internet as a marketing medium with the use of the site (website) as a catalog is in question. Buyers can easily select products from the catalog using pol aini. Payments can also be made online by buyers. [2]

Behind the ease and speed of access to online business or online marketing, the reality reveals that the mechanism of electronic transactions in Indonesia remains vulnerable to the emergence of consumer losses. At least two factors influence the tendency to appear to lose, namely: (1) because the mechanism is easily accessible to anyone, people frequently ignore the aspects of protection; and (2) a lack of awareness of the rights and obligations arising from electronic transactions.[3] Furthermore, contracts or agreements are frequently used to legitimize transactional relationships established through websites or social media. Of course, the contract is usually in the form of an electronic contract (e-contract), in which the parties do not meet in person. In practice, many online transaction websites use the standard contract model to conduct their business; some social media accounts even enforce mutual agreements through short messages. Sellers are typically regarded as the dominant party in this context. In fact, according to Article 1320 of the Civil Code regarding the terms of the agreement's validity, there is a blurring of norms in the arrangement regarding the exact form of the electronic contract and the terms of the contract.[4] Similarly, in terms of affiliated marketing practices, also known as the marketing affiliation, the mechanism for implementing contracts used as the foundation for the legitimacy of the parties' legal relationships is alleged to contain legal loopholes, which can potentially be in the validity of their legal contracts, particularly in terms of the parties' legal competence. It is claimed that many people take advantage of affiliate marketing programs offered by

certain marketplace platforms while they are underage, not legally capable, and without parental permission.[5]

The purpose of this paper is to identify potential legal loopholes in the contracting mechanism found in the affiliated marketing and to propose a model for improving the contracting mechanism, particularly in affiliated marketing run by the providers of marketplace platform.

2. Methodology

By using a statutory approach, this normative study expands on the provisions of Civil Code Article 1320, Law Number 19 of 2016 on the Amendments of Law Number 11 of 2008 on Electronic Information and Transactions, and Government Regulation Number 71 of 2019 on the Implementation of Electronic Systems and Transactions to find solutions to the problem of applying contracts to marketing affiliation. Hence, the data collection technique that was employed is a literature review. Secondary data sources include primary legal materials, such as the statutory provisions mentioned above; secondary legal materials, such as the results of studies, books, and journals relevant to the topic of this study; and tertiary legal materials, such as relevant legal dictionaries. To answer the primary question of the present study, all the data will be analyzed descriptively and qualitatively.

3. Results and Discussion

3.1. Affiliate Marketing; The Contract and Its Implementing Mechanism.

The term "affiliated marketing" refers to the action of promoting someone else's product. If they are successful in selling the product, that person will receive a commission from the product owner. In the Marketing Affiliation program, there are two mutual relationships: the company or institution that owns the product (affiliated merchant) and product marketers (affiliated marketers), who are paid or receive a commission after the product is sold. This affiliated system also frequently employs several standard terms, such as: ((1) A merchant is a person or company who has a product and is willing to have it promoted by affiliate participants or members. (2) Affiliated Marketer (participant/member of the product marketer's affiliation); namely, registered partners

who have been confirmed and approved by the merchant to conduct promotions and receive commissions in accordance with the terms and conditions. (3) A network affiliate platform is a website that manages the owner's and affiliate participants' online affiliate business. (4) A customer is someone who buys a product from a merchant.[6]

Marketing affiliation is regarded as the best model for inexperienced business actors because the business person's only responsibility is to market; there is no need to produce, package, and distribute, answer complaints, or build a product sales website.[7] The method of dealing with affiliate service providers is how this approach operates. This concept emerged and became a choice because its working procedure was thought to be significantly quicker. Additionally, because there is no need to produce and there are no additional administrative expenses, the capital required is significantly less expensive. Loss risk is hence substantially lower.[8]

There are at least 8 (eight) marketing affiliation opportunities in Indonesia that novice business actors prefer and pluralize, namely:[9]

1. Lazada Affiliate Marketing Indonesia

E-commerce Lazada Indonesia has launched a lucrative marketing affiliation program. Each member of this program is only required to promote Lazada products on their respective social media platforms. If someone purchases the product through a member, the member will be paid 7% on the transaction. This Lazada affiliation program also has no start-up costs. Simply by registering as a member at <https://www.lazada.co.id/lazada-affiliate-program/>.

1. Hostinger Affiliate Marketing

Hostinger launches partnership programs for high-quality IT blogs, websites, and YouTube channels. The program pays a 60% commission on each transaction. To gain access to the Hostinger marketing affiliation program partnership, one must first register at <https://www.hostinger.co.id/afiliasi>. All registration stages are similar to those applicable at the Lazada Affiliate Marketing program registration stage.

2. Omegasoft Affiliation Marketing

"Omegasoft," an e-commerce software company and franchise, has launched a vacancy listing marketing affiliation program with a 5% profit per sale. Omegasoft is a company that sells a wide range of applications that are required by many modern businesses, including cashier (POS) applications, online accounting, e-commerce, and franchise services. The Omegasoft affiliation program is practical

and flexible in its operation, and in order to become a member or join, one must first complete the registration stages at <https://omegasoft.co.id/about/affiliate/link>, with the registration stages being the same as those applicable to the program above. The transfer of Omegasoft Affiliate commissions is done collectively per month, which is a slight difference between this program and others.

3. Bli Bli E-commerce

Aside from Lazada, the local online retailer Bli Bli (Blibli.com) also has a marketing affiliation program. Bli Bli is an e-commerce site that is widely regarded as one of the most successful online shopping malls in Indonesia. Bli Bli offers commissions ranging from 1% to 4% per transaction through this affiliate marketing service. Profit sharing will take place when customers purchase Bli Bli products through the affiliated member link and do not cancel or refund the purchase. Every prospective member who wishes to participate in this program must also register on the e-commerce site or application Blibli.com. This program requires that Bli Bli affiliate commission money be withdrawn after it has reached a minimum of IDR 500,000 (five hundred thousand rupiah) for local transactions and IDR 10,000,000 (ten million rupiah) for international transactions.

4. Nusantara Host

For anyone who advertises their domain and hosting services, Nusantara Host gives a commission of 75% up to 1 million rupiah. Nusantara Host affiliate members are eligible for 3 (three) different types of substantial income, including: IDR 400,000 (four hundred thousand rupiah) each transaction from the sale of VPS (Virtual Private Server); dan IDR 1,000,000 (one million rupiah) commission on dedicated server sales—per transaction. Members can benefit from these three forms indefinitely. Prospective members must register at <https://www.nusantarahost.co.id/affiliate.php>, be at least 17 years old, and understand how marketing affiliation works. Wage withdrawals are permitted in this program once a week with a minimum income balance of IDR 1,000,000. (one million rupiah).

5. Tiket Affiliate by Tiket.com

Travel agencies, such as Tiket.com, have special cooperation programs for those who enjoy traveling. Affiliate Ticket Members have access to vouchers and travel tickets (planes, trains, buses, etc.) as well as lodging (villas, hotels, etc.) that are

not available to the general public. This program also provides a percentage commission if a member successfully invites others to purchase Tiket.com services using the member's affiliated link/code. However, affiliate ticket commissions can only be withdrawn once per month via the website's "Invoice" application. This program can be registered for by sending an email to partner@tiket.com. This method differs from other affiliate programs' registration procedures.

6. Matahari Mall

Matahari Mall has also established an affiliation program. There are two (two) straightforward ways to join the Indonesia Matahari Mall affiliate program: Join shopstylers.com by registering on the "Super Affiliate" platform at matahari-mall.com (or by clicking <https://super.mataharimall.com/affiliateaja/>). The registration process is straightforward. Beginning with filling out the registration form on the sites listed above, waiting for the account verification process, and adding the promotional URL provided by Matahari Mall to the website/blog or personal social media.

7. Traveloka Affiliate

Traveloka is an Indonesian travel agency with offices in several neighboring countries, including Thailand, Vietnam, and Malaysia. Traveloka affiliate programs also provide business opportunities for tourism content creators (bloggers, web managers, influencers, and YouTubers). It is sufficient to register at <https://www.traveloka.com/en-id/affiliate..>

In addition to the 8 (eight) marketing affiliation programs mentioned above, there are four (four) other marketing affiliation programs that are well-known and popular to the public, namely Affiliatte Marketing Shopee, Asianbrain, Zalora, and Buka Buku (bukabuku.com).[10]

There are similarities in the application of the requirements to become a member, including the procedures and stages of the registration process to become a participant or partner in the program, across all platforms offering marketing affiliation programs. When registering, all program providers require a minimum age of 17 years and/or parental consent. All terms and conditions of being a partner/participant in the program are generally contained in the terms and policies of the program, which are accessible via the application platform. The mechanism for registering as an Marketing Affiliation member can be described in general terms as the following stages:

Prospective partners and participants use e-commerce to access the program provider's website or application. Then, sign in to your application account. If you do not already have an account, potential participants/partners must first create one. Then, locate the "Affiliate Marketing Program" menu. Then, enter the email address and verification code sent to you by the program provider. Fill out the personal information and choose which social media, website, or blog members will use to promote themselves. Understanding and agreeing to the marketing affiliation program provider's partner terms and conditions is the most important stage, as it will affect the validity of the legal relationship that is formed. If you have read, understood, and agreed to these terms, please indicate your agreement by clicking "Submit Now." Finally, fill out the bank account information. If you already have your own bank account, you can skip this step. If you haven't already, you can skip this stage and finish it later.

Based on the pattern of the stages of the program registration process until the approval of all the terms and conditions imposed by the marketing affiliation program provider, it illustrates the possibility of legal loopholes, particularly in terms of ensuring that the parties who access and register according to the specified minimum age limit or not, including determining whether the registrant's parents have given permission or not if they are under the age of 18. Moreover, this can have an impact on the completeness of the valid terms of the agreement, particularly in the aspect of legal competence, which is a subjective condition. The owner of the application system or affiliation program registration platform does not appear to have designed a flow process that accommodates the system's control and supervision mechanisms, which may result in legal loopholes. This is most emphatically not a breach or non-compliance with the contractual provisions, as the reference provisions are also not as detailed.

3.2. Registration System of Marketing Affiliation Program for Minors without Parental Consent

Electronic contracts may be classified as agreements under certain conditions if the service provider of the electronic transaction provider who uses the electronic contract fails to meet the provisions stipulated in the implementation of the electronic contract or electronic transaction. Electronic contracts are also classified as innominate contracts because they are not specifically named and regulated by the Civil Code.

Electronic contracts (e-contracts) are also considered as a type of new development of agreements/contracts, particularly since their introduction in 1996 by the UNCITRAL (United Nations Commission on International Trade Law) and the issuance of Law Number 11 of 2008, which was later updated to Law Number 19 of 2016 on Electronic Information and Transactions. However, the above provisions do not provide a detailed explanation of what an electronic contract is and how it is formed.

In general, an electronic contract is one that is created using an electronic form.[11] This electronic-based contract arose as a logical result of the implementation of electronic transaction activities containing legal relations electronically through the combination of computer-based network tools with communication systems and internet network facilitation.[12] However, many people misunderstand electronic contracts as digitized agreements, such as letter agreements scanned or typed to be used as soft copies. That comprehension, however, cannot be justified.

Nonetheless, according to the provisions of Article 4 of the UNCITRAL (United Nations Commission on International Trade Law) which states, "as between parties involved in generating, sending, receiving, storing, or otherwise processing data messages, and except as otherwise provided, the provisions of chapter III may be varied by agreement", then it is clear that UNCITRAL does not specify specific limitations on the form of electronic contracts, but rather provides guidance on how a contractual agreement is valid. As a result, electronic contract forms that vary according to the growing media became popular, also known as "variation by agreement." This is because the mechanism for implementing electronic contracts, also known as EDI, only uses electronic networks as a medium for offering and accepting contracts (electronic data interchange).[13], [14]

In the field of business activities, at least 5 (five) types of electronic contracts are listed, namely:[15] (1) An electronic mail contract is one that has been legitimized as legitimate and is based on email communications. Bidding and receiving may take place via e-mail or in conjunction with other electronic communications, written or faxed documents; (2) Electronic contracts can also be formed via websites and other online services, such as those that sell goods and services. Then, consumers can receive offers by filling out and submitting a form on the website; (3) a contract in electronic form that includes direct online information and service transfers This form necessitates the use of website media for communication between the parties as well as a medium of exchange or agreement; (4) A contract that includes Electronic Data Interchange (EDI), which is an electronic exchange of business information between trading partners via computers

(trading partners); (5) Contract "via the internet, accompanied by a click wrap license and shrink wrap software downloaded via the internet, which is typically sold with a click wrap license." When the software is first installed, the license appears on the buyer's monitor, and the prospective buyer is asked if he is willing to accept the terms of the license. Users are given the option of saying "I accept" or "I don't accept." [16]

The general norm in contract terms is that a contract or agreement is considered valid when it meets the conditions for the validity of an agreement outlined in Article 1320 of the Civil Code. Furthermore, according to Article 46 of Government Regulation Number 71 of 2019 on the Implementation of Electronic Systems and Transactions, an electronic contract is considered valid if: (1) agreement/consent of the parties; (2) it is carried out by a legal subject who is capable or authorized to represent in accordance with legislative provisions; (3) existence of certain subject matter ; and (4) the object of the transaction is not contrary to laws and regulations, morality, or public order. According to article 9 of Law No. 11 of 2008 on Electronic Information and Transactions, business actors who offer products through electronic systems must provide complete and correct information related to the terms of the contract, the manufacturer, and the product offered, but this provision does not specify what the terms of the contract are. In the explanation, there is no further explanation for this matter.[4]

If the contract terms are carried out by a capable legal subject or who is authorized to represent in accordance with the provisions of the law, it can be understood that the term "capable" is interpreted as the ability to carry out legal actions, which is the authority derived and guaranteed by law both against private persons and corporate persons (legal entities) as subjects supporting rights and executing obligations. The ability to carry out legal actions or relationships for personal gain differs from the authority to carry out legal actions for the benefit of a legal entity (legal entity).[17]

If the subject of law is a person, his or her right to perform legal acts begins when the person reaches the age of 21 or is a grown-up. A person who acts as a legal subject for and for a legal entity is a person with a significant position in the legal entity. For example, in the case of a limited liability company (PT), the person who has the legal authority to carry out a legal action is the board of directors or a person appointed by the board of directors.[18]

However, according to Section 1329 BW (*Burgerlijk Wetboek*), every person is capable of contracting, unless the law declares incompetence. Section 1330 BW (*Burgerlijk Wetboek*) provides for a person's non-disclosure in contracting, i.e., (1) immature persons.

Section 1330 BW defines an adult as someone over the age of 21 or someone under the age of 21 who is married. However, there are still differences in how adult age restrictions are regulated in Indonesia. According to Marriage Law No.1 of 1974, an adult is defined as a person who has reached the age of 18 and is considered capable of performing legal acts without the presence of a parent or guardian by his family. This maturity factor is one of the most important factors for the parties to create a valid and legally binding electronic contract. Those who have been entrusted to a guardian Even if a person is 21 years old, he or she may be considered incompetent to carry out legal acts or enter into contracts. People with mental disabilities, ignorance, eye pain, and those under guardianship, for example, are unable to exercise their legal rights. (3) The Act defines women as "all persons to whom the Act has prohibited giving certain consents." Articles 108 and 110 BW establish that women are not permitted to perform civil law acts. It has, however, been removed since the publication of SEMA No.3 in 1961, which emphasizes that there is no difference between men and women when carrying out legal or contractual action.[17]

Departing from the normative explanation above, and paying attention to the weaknesses found in the registration process of the marketing affiliation program that resulted in a lack of control to identify the age of the registrant or the presence or absence of parental permission from participants who were not yet adults, the marketing affiliation program provider should be able to develop an information system on its application that responds to the suitability of the capacity. Given that many participants in this marketing affiliate program are still children or are classified as immature and have not received parental permission.[5] Although Government Regulation Number 71 of 2019 on the Implementation of Electronic Systems and Transactions, particularly in Article 49, specifies that electronic transactions occur when the parties reach an agreement. Unless otherwise specified by the parties, such an agreement occurs when the sender's transaction offer is received and approved by the recipient. The agreement can be formed by: (1) an act of acceptance expressing consent; or (2) the Electronic System User accepting and/or using the object. Then, in Article 50, the parties must ensure: (1) the provision of correct data and information; and (2) the availability of facilities and services, as well as the resolution of complaints, when implementing electronic transactions. This provision, however, has not specifically required electronic transaction providers, particularly in the implementation of contracting mechanisms, to develop application information systems that are in accordance with the contracting conditions. Supposedly,

at the affiliate program participant registration stage, the program organizer can arrange the flow of the registration system with the Close Proceed method, particularly when filling out the personal data of prospective registrant participants. This means that when filling out personal data, such as the date of birth, the system is set up in such a way that it cannot process registrations whose personal data shows an immature age based on the date of birth entered by the registrant. As a result, registrants are unable to access, submit, or advance to the next page of the registration form. Furthermore, the system must be designed to accept uploaded scans of ID cards or scans of family cards as proof of filling out the date of birth data. Furthermore, the system can be designed to obtain the parental consent of the immature registrant participant by offering the option of obtaining parental permission when the registrant is identified as immature after entering the date of birth. The system also displays a column or button willingness for participants to give their parents' permission at that time. After pressing the button or column, an email field and parent contact number appear, and the system automatically sends notifications to registrant parents regarding their request for permission for their immature children to participate in the marketing affiliation program registration process. This can certainly prevent immature registrants from becoming participants, making electronic contracts unnecessary.

To ensure that efforts to develop this accommodating system are well received by the information system operator in the marketing affiliation program, regulatory clauses for the development of this system must be aligned or adjusted, whether it can be accommodated into the provisions of government regulations on the Implementation of Electronic Systems and Transactions or in the form of more technical provisions as a reference for driving the d Furthermore, the need for system control or filtering for the electronic contract process in general can be used as one of the assessment indicators in electronic certification, requiring organizers of the electronic transaction information system to comply.

3.3. Conclusions

It is claimed that the registration process for marketing affiliation programs still has flaws that have an influence on the absence of information systems to prevent participation from individuals who are underage or who do not have parental consent. Given that the loophole indirectly disregards the capacity terms as stipulated in the legal terms of

the agreement based on Article 1320 of the Civil Code and Article 46 of Government Regulation Number 71 of 2019 on the Implementation of Electronic Systems and Transactions, this will undoubtedly have an effect on the existence of electronic contracts agreed upon by the parties. Hence, the organizer of the information system in the marketing affiliation program can create a more accommodating system while meeting all legal requirements. Given that many participants are children or immature in age and have not received parental permission to participate in the affiliate marketing program. The system can be developed, particularly during the registration phase, so that the system has a filtering mechanism for underage registrants. Thus, it appears necessary to revise regulations that govern electronic transaction practices in order to ensure that electronic transaction operators develop electronic transaction systems that meet the requirements for adulthood and parental consent, this could even become one of the criteria for electronic transaction system certification for operators.

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