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Protecting People: Promoting Digital Consumer Rights

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Policy Paper No. 27

Protecting People:
**Promoting Digital
Consumer Rights**

by Ira Aprilianti

www.cips-indonesia.org



Policy Paper No. 27
Protecting People:
Promoting Digital Consumer Rights

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Jakarta, Indonesia
May, 2020

GLOSSARY

- ACCP : ASEAN Committee on Consumer Protection
- ACEI : ASEAN Consumer Empowerment Index
- ADR : Alternative Dispute Resolution
- AFPI : *Asosiasi Fintech Pendanaan Bersama Indonesia* or the Indonesian Fintech Lenders Association
- AFSI : *Asosiasi Fintech Syariah Indonesia* or the Indonesian Sharia Fintech Association
- AFTECH : *Asosiasi Fintech Indonesia* or the Indonesian Fintech Association
- Bappenas : *Kementerian Perencanaan Pembangunan Nasional/Bappenas* or Ministry of National Development Planning/ National Development Planning Agency
- BI : *Bank Indonesia* or the Indonesian Central Bank
- BPKN : *Badan Perlindungan Konsumen Nasional* or the National Consumer Protection Agency
- BPSK : *Badan Penyelesaian Sengketa Konsumen* or the Consumer Dispute Settlement Agency
- BSSN : *Badan Siber dan Sandi Negara* or the National Cyber and Crypto Agency
- CME : Coordinating Ministry for Economic Affairs
- CSIRT : Computer Security Incident Response Team
- EIT Law : Law No. 19/2016 on Electronic Information and Transaction, revised from Law No. 11/2008 on Electronic Information and Transaction
- FDC : Fintech Data Center
- GCPL : Law No. 8/1999 on Consumer Protection, also known as General Consumer Protection Law (GCPL)
- GDPR : EU's General Data Protection Regulation
- IDA : The Indonesian Digital Association
- idEA : The Indonesian E-Commerce Association
- IKK : *Indeks Keberdayaan Konsumen* or the Consumer Empowerment Index
- KPPU : *Komisi Pengawas Persaingan Usaha* or the Commission of the Supervision of Business Competition
- LAPS : *Lembaga Alternatif Penyelesaian Sengketa* or the Alternative Dispute Resolution Institutions
- LPKSM : *Lembaga Perlindungan Konsumen Swadaya Masyarakat* or the Consumer Association
- MOCI : Ministry of Communication and Informatics
- MOT : Ministry of Trade
- MSMEs : Micro-, Small-, and Medium-sized Enterprises
- ODR : Online Dispute Resolution
- OECD : The Organisation for Economic Co-operation and Development
- OJK : *Otoritas Jasa Keuangan* or the Financial Services Authority
- PDP : *Perlindungan Data Pribadi* or Personal Data Protection
- PII : Personally Identifiable Information
- PPD : Public-Private Dialogue

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- Prolegnas : *Program Legislasi Nasional* or the Parliament's Legislative Agenda
RPJMN : *Rencana Pembangunan Jangka Menengah Nasional* or the National Mid-term Development Plan
SiPENA : *Sistem Informasi Pengaduan Konsumen Nasional* or the National Information and Complaints System
Stranas-PK : *Strategi Nasional Perlindungan Konsumen* or the National Strategy of Consumer Protection
The E-Commerce Regulation : Government Regulation No. 80/2019 on E-Commerce
SWI : *Satgas Waspada Investasi* or the Investment Alert Task Force
UNCTAD : United Nations Conference on Trade and Development
YLKI : *Yayasan Lembaga Konsumen Indonesia* or the Indonesian Consumers Foundation

This paper was published during the COVID-19 crisis, which has further accelerated the rise of the digital economy in Indonesia. Although it is not yet known how the crisis will affect this policy space, the pandemic has exposed and possibly even exacerbated many immediate concerns about consumer education and protection discussed in this paper, including data privacy and security. As the government addresses the economic effects of the crisis, it must not lose sight of the importance of open markets and fair market conduct, not least in the interest of consumers. Long-lasting parliamentary discussions need to be expedited, including the revision of the General Consumer Protection Law, the Anti-Monopoly Law, and deliberations of the Bills on Personal Data Protection and Cybersecurity. These legislative initiatives should be prioritized along with all other measures to speed up Indonesia's recovery after the crisis.

EXECUTIVE SUMMARY

The Indonesian internet economy was sized at an estimated USD 40 billion in 2019 and is expected to reach USD 130 billion by 2025. Although omnipresent “unicorn” retailers tend to be front of mind in this sector, e-commerce is dominated by micro enterprises with one to four employees. In fact, almost 20% of all online commerce activities are conducted on Instagram.

While the digital economy is booming, the Indonesian government is struggling to keep up with the protection of digital consumer rights. The National Consumer Protection Agency (BPKN) and the Indonesian Consumer Association (YLKI) recorded only 48 complaints regarding e-commerce transactions in 2019.

The following reforms are recommended to open up non-litigation and litigation avenues for the protection of digital consumer rights once corporate customer service fails to settle complaints by e-commerce customers.

The planned revision of the General Consumer Protection Law from 1999 needs to be completed without further delay. Digital consumer protection and problems emanating from legal loopholes have made this an urgent priority.

The National Parliament should seek substantial inputs and speed up discussion of the Personal Data Protection Bill as well as the Cybersecurity and Cyber Resilience Bill, both of which have been included in the national legislative plan for the parliamentary term 2020–2024.

The National Strategy of Consumer Protection (Stranas-PK) should explicitly delineate the authority of relevant ministries. This will improve cross-sectoral and inter-agency coordination and address overlapping or contradictory regulations. Alternatively, the government should consider establishing a dedicated task force for the digital economy.

BPKN should provide comprehensive reports and policy recommendations to existing government task forces and all relevant ministries.

The government should engage the private sector in co-regulating the digital economy and look for ways of facilitating and endorsing responsible business initiatives. A principled code of conduct that is adjusted to the local context would help online businesses to act responsibly and fairly towards consumers.

The integrated dispute resolution system SiPENA needs to educate consumers about their rights and obligations. The platform should incorporate non-litigation avenues for dispute resolution while E-Courts should settle e-commerce disputes with lower costs for the disputants.

Training programs for consumers and consumer protection agencies need to improve consumer literacy and human resource capacity in these agencies.

Finally, Indonesia's competition policy needs to complement consumer protection policies in order to secure the benefits of competition while preventing restrictive business practices. There should be institutional coordination between competition and consumer-related agencies. Barriers to entry for new businesses into e-commerce should be lowered to promote market competition. The Indonesian Anti-Monopoly Law No. 5/1999 should be reviewed and updated to accommodate the digital economy and to incorporate digital consumer protection issues.

INDONESIA'S DIGITAL INDUSTRY

Technological progress supports the development of nations by incentivizing innovation and supporting the growth of business, trade, finance, investment, and even institutional capacity (UN, n.d.). Indonesia is no exception. Technology has helped people get out of poverty through spurring connectivity, consumption, production, and employment.

“The combination of market-based competition and internet connectivity allows businesses to provide wider, faster, more affordable, and more reliable choices for consumers.”

The combination of market-based competition and internet connectivity allows entrepreneurship to flourish and the digital economy provides open platforms that reduce the transaction costs to start a business, no matter who is trying to start one. It encourages businesses to provide wider, faster, more affordable, and more reliable choices for consumers.

The Indonesian internet economy quadrupled in size from 2015 to 2019, reaching an estimated USD 40 billion, or 3.57% of Indonesia's nominal GDP (Google & Temasek, 2019; CEIC, n.d.). As the biggest digital economy among Southeast Asian countries, its value is projected to reach USD 130 billion by 2025 (Google & Temasek, 2019). The rapid growth of the Indonesian digital economy has been attributed to significant foreign investment flows; the emergence of a large consumer class; high smartphone penetration; and the evolution of a payment infrastructure that facilitates online purchases (Commonwealth of Australia, 2018).

Digital economy cuts across various sectors including retail; transport and logistics; financial services; manufacturing; agriculture; education; healthcare; and broadcasting and media services (OECD, 2014). In Indonesia's digital economy, the two dominant sectors are retailing e-commerce and online financial services. These two sectors are expected to supply more than 16.2 million jobs in 2020 (McKinsey, 2018; PwC, 2019).

Statistics Indonesia (*Badan Pusat Statistik* or BPS, 2019) estimated 13,485 online retail and marketplace businesses, both formal and informal, with almost 25 million transactions valued at IDR 17.21 trillion (USD 1.21 billion)¹ in 2018. E-commerce businesses are dominated by micro enterprises with one to four employees (84.21%), followed by small enterprises with five to 19 employees (12.28%). Only 3.51% of e-commerce companies have more than 20 employees (Statistics Indonesia, 2019).

E-commerce businesses are diverse. Online companies specialized in retail platforms such as Tokopedia, Bukalapak, Shopee, OLX, and Lazada, and also marketplaces on social media and instant messaging platforms such as Instagram, Facebook, WhatsApp, and Line. E-commerce through social media reaches Indonesia's 160 million recorded active social media users who spend, on average, three hours and 26 minutes per day on social media. This is higher than the global average of two hours and 24 minutes (We Are Social & Hootsuite, 2020).

¹ This paper use exchange rate (average rate between January 2018 to March 2020): USD 1 = IDR 14,247.68

In 2018, 19.52% of online retail and marketplace interactions took place through Instagram (Statistics Indonesia, 2019). The highest levels of Instagram e-commerce activity were recorded in Aceh Province (39.49%), followed by South Kalimantan (37.96%) and Jambi (34.18%), while the activities were lower in DKI Jakarta and Banten, at 5.75% and 12.46%, respectively (Statistics Indonesia, 2019). This implies that social media helps micro informal businesses throughout Indonesia to gain market access.

Financial technology (fintech) products have also proliferated in Indonesia. As of March 2020, there were 299 fintech companies consisting of e-lending companies (53.85%); digital financial innovation companies (29.8%); and e-payments companies (16.39%) (see Appendix 1). The availability of various fintech products provides more lending and payment options and improves financial flows for consumers, especially in regions where formal financial infrastructure is limited.

In the payment sector, Cash-On-Delivery (COD) still dominates the payment methods in e-commerce (83.73%) (Statistics Indonesia, 2019) but electronic money transfers grew by 307% in 2018 to IDR 47.2 trillion (USD 3.31 billion) (East Ventures, 2020, p. 35). This suggests that financial technology is shifting consumer behavior.

E-lending reached IDR 102.53 trillion (USD 7.20 billion) in Indonesia on 31 March 2020, a 208.83% increase compared to March 2019 (OJK, 2020a). The peer-to-peer (P2P) lending industry has helped connect 640,233 lenders to more than 24 million borrowers across Indonesian provinces.

The Asian Development Bank (2017) reported that digital innovation in the finance sector has the potential to fundamentally help underserved parties, especially the poorest socio-economic groups, women, and micro-, small-, and medium-sized enterprises (MSMEs). The report estimated that the cumulative effect of digitally driven acceleration in financial inclusion could boost Gross Domestic Product (GDP) growth by 2% to 3%, which would translate into a 10% increase in income for Indonesians earning less than USD 2 per day. The massive growth in fintech is supported by growth in mobile phone subscriptions, collaborations with other digital platforms (e-commerce, ride-hailing, logistics), and development of supportive IT infrastructure and digital ID (Google & Temasek, 2019; PwC, 2019; East Ventures, 2020).

The combination of technology, innovation, and dynamic business models gives fintech lending companies wider coverage, especially in remote areas, because it circumvents the infrastructure and risk assessment challenges faced by conventional lending providers (ADB, 2017; PwC, 2019). For example, fintech lending digitalizes accounting and credit processes and provides platforms for data sharing, alternative lending, and alternative data in lieu of formal banking records (such as mobile wallets and transactional accounts for credit scoring) (ADB, 2017, p. 49). Traditional retail businesses are able to expand through e-lending even without a conventional credit history and collateral. This has benefited the lower to middle income population and MSMEs in particular. More than 70% of this population has no access to traditional credit. In 2018–2019, fintech lending facilitated IDR 45 trillion (USD 3.16 billion) estimated gross value added for productive purposes and IDR 35 trillion (USD 2.46 billion) estimated gross value added for consumptive purposes (PwC, 2019).

“Since digital transactions are done without the opportunity to inspect, test, or evaluate goods and services prior to the transaction, consumers need to be digitally literate enough to understand the terms and conditions of their electronic transaction and of what payments are required.”

The enormous growth of digital products and services has pushed governments, industries, and consumers to adjust to new business models. Since digital transactions are done without the opportunity to inspect, test, or evaluate goods and services prior to the transaction, consumers need to be digitally literate enough to understand the terms and conditions of their electronic transaction and of what payments are required. Digital literacy has to be accompanied by clear and efficient complaints mechanisms to ensure that consumers who have suffered harm or loss from digital transactions have access to appropriate compensation. In principle, consumers should have the option to take their complaints to the business in question and, if necessary, proceed to seek redress through various channels, such as reporting to the authorities, out-of-court settlements (e.g. alternative dispute resolution) as well as litigation. To date, the courses of action remain limited and existing mechanisms largely underutilized by consumers in the country.

In 2019, only 48 complaints regarding e-commerce were recorded by the National Consumer Protection Agency (*Badan Perlindungan Konsumen Nasional* or BPKN) and the Indonesian Consumers Foundation (*Yayasan Lembaga Konsumen Indonesia* or YLKI). Complaints were made about personal data issues; fraud; mismatch/defect between items ordered and delivered; the refund process; account hijacking; problems in tracking and shipping services; and problems in cross-border transactions (YLKI, 2016; YLKI, 2018; Interviews 2 & 8).

Table 1.
Consumer Complaints in E-Commerce and Fintech

Source		2018	2019
BPKN	E-commerce	3	12
	Fintech	N/A	N/A
YLKI	E-commerce (online shopping)	38	34
	E-commerce (online transportation)	2	2
	Fintech (e-lending)	81	96
	Fintech (e-payment)	8	8
OJK	Fintech	N/A	1

Sources: BPKN, YLKI (2020a), OJK

Consumer protection in the digital economy is particularly complex as it involves data protection, cybersecurity, secure payment systems, and consumer literacy on digital contact and transactions. Statistics from Cyber Patrol (*Patroli Siber*) recorded 10,516 reports, including 4,893 online fraud, 178 identity/data theft, 537 extortion, and 158 electronic system hacking reports between January 2019 and April 2020 (Directorate of Cyber Crime, n.d.). The assumed loss resulting from these cybercrimes and illegal content reports is IDR 61.71 billion (USD 4.33 million).

YLKI (2020a; 2020b) received 96 reports against e-lending companies in 2019, regarding 54 illegal fintech companies and 17 legal fintech companies. The most common issues are excessive interest rates, poor debt collection standards, and using consumers' personal contacts data without consent (YLKI, 2020b). This happened despite the Financial Services Authority's (*Otoritas Jasa Keuangan* or OJK) decree restricting fintech lenders' access to mobile internet data, as well as microphone, camera, and location data. Other areas of concern in e-lending are the lack of pricing transparency, unclear rules regarding penalties and fees, minimum disclosure standards, and poor administrative and record keeping systems that could affect the most vulnerable borrowers (Suleiman, 2019).

A clear regulatory framework and strong collaboration with stakeholders are required to set market rules that protect consumers while supporting and sustaining consumption growth in Indonesia's digital economy.

REGULATORY FRAMEWORK FOR CONSUMER PROTECTION

A. General Consumer Protection Law (GCPL)

The main legal foundation for consumer protection in Indonesia is the Law of the Republic of Indonesia No. 8/1999 on Consumer Protection, also known as General Consumer Protection Law (GCPL). GCPL aims to protect consumers by mapping the rights and obligations of both consumers and businesses as well as the responsibilities of government and consumer-related institutions.

The law was drafted in a relatively short time after President Soeharto signed a Letter of Intent with the International Monetary Fund in order to secure loans in 1998, and was passed by both the House of Representatives (*Dewan Perwakilan Rakyat* or DPR) and the executive branch of the government after only three to four months (Shidarta & Koos, 2019; Sudaryatmo, n.d.; Interview 2). Many experts consider the GCPL flawed in legal and non-legal aspects² (Supreme Court, 2006; Rosadi & Tahira, 2018; Shidarta & Koos, 2019; BPKN, 2012; Sudaryatmo, n.d.; Interview 2).

“ The issues unique to e-commerce, including non-face-to-face transactions; the use of the internet; the amount and types of data that platforms gather; cross-border transactions; and transactions involving digital products and e-services, are not covered by the GCPL. ”

In spite of the proliferation of digital products, services, and transaction methods, GCPL has yet to accommodate consumer rights in online transactions (Rosadi & Tahira, 2018; Nurdiansyah, n.d.; BPKN, 2018; Interviews 2 & 8). While some provisions in GCPL can be applied to e-commerce (such as the right to comfort and safety in consuming goods and services) there is insufficient coverage of rights specific to digital transactions. For instance, there is no provision for data protection and data security, for example regarding cryptographic techniques or information privacy (Rosadi & Tahira, 2018; Jumiati et al., 2017). The issues unique to e-commerce, including non-face-to-face transactions; the use of the internet; the amount and types of data that platforms gather; cross-border transactions; and transactions involving digital products and e-services, are not covered by the GCPL.

GCPL does not explicitly acknowledge digital contracts, neither specify litigation and non-litigation avenues or the jurisdiction³ for dispute resolution⁴, nor assert which buyers' or sellers' contract is binding. GCPL only applies to businesses under Indonesian jurisdiction, while Indonesia's digital economy has significant cross-border transactions. As of March 2020, Indonesia's P2P lending platforms recorded 20.71 million lender accounts registered from abroad in the various lending companies (OJK, 2020a). The GCPL has no provisions to address these cross-border transactions (Rohendi, 2015).

² Legal scholars have criticized the legal procedure, the validity of the agreement, the arrangement of standard clauses, and the difficulty of confirming users' identities (Supreme Court, 2006; Rosadi & Tahira, 2018; Bernada, 2016; Rahardjo, 2017). In addition, there are concerns around transaction security, cross-border transactions, liability of products and/or services, and the governance, institutional, and social and cultural context that affects the implementation of the law (Rosadi & Tahira, 2018; Shidarta & Koos, 2019).

³ This is regarding GCPL flaws on *choice of law and choice of forum* (see Septiansyah, 2017)

⁴ Alternative Dispute Resolution (ADR) mechanisms are not mentioned in the GCPL as they were only introduced in the past few years, notably in the area of financial services and electronic transactions on the OJK Law, the Trade Law, and the E-commerce Regulation.

The fact that sellers and buyers have no contact before the transaction gives sellers more power than in the face-to-face economy to set the terms of the contract. Buyers are left with little bargaining power (Barkatullah & Djumadi, 2018; Bramantyo & Rahman, 2019; Rizka, 2019). If they have to “take it or leave it”, it is unlikely they will end up with a contract considered fair by both sides.

The Supreme Court conducted an analysis of the GCPL in 2006 following a request by the Trade and Industry Department (later split into Ministry of Trade or MOT and Ministry of Industry or MOI) (Supreme Court, 2006). The analysis concluded that GCPL has procedural issues that the Supreme Court resolved by enacting Supreme Court Regulation concerning Consumer Dispute Resolution Procedure No. 1/2006.

Concerns have also been raised regarding the content of GCPL. BPKN has been conducting seminars and focus group discussions since 2011 and has proposed GCPL amendments to the government (BPKN, 2012; BPKN, 2018; Interview 8). These recommendations include revising articles on the rights and obligations of consumers and businesses; clarifying the responsibility of businesses by differentiating products and services; reforming BPKN’s authority to evaluate and supervise the implementation of GCPL; and governing data and information flows in GCPL (BPKN, 2012; BPKN, 2018).

The revision of GCPL is in the parliament’s legislative agenda (*Program Legislasi Nasional* or Prolegnas) for 2020–2024, but it was not included in the list of prioritized bills in 2020. The Ministry of Trade has initiated GCPL revision but struggles to coordinate its efforts with other ministries (Interviews 4, 8 & 10). BPKN (2019) aims to make the GCPL revision a priority in Prolegnas 2021, but without broad public support, there is little urgency motivating policymakers.

The revision of GCPL is in the parliament’s legislative agenda for 2020–2024 but without broad public support, there is little urgency motivating policymakers.

B. E-Commerce Laws and Regulations

A further component of the consumer protection system took effect with the passage of the Law of the Republic of Indonesia No. 7/2014 on Trade (Trade Law), which explicitly mentions that trading activities ought to improve economic growth and consumer protection.

The Trade Law requires online businesses to provide complete and correct information according to the Law of the Republic of Indonesia No. 19/2016 on Electronic Information and Transactions (EIT Law). Businesses are required to supply information about the identity and legality of the business owner/producer; technical requirements or classifications of the goods and services that are being offered; price and payment methods; and shipping arrangements. Businesses that do not provide this information will be penalized via revocation of their trading license. In practice, however, this sanction is hard to enforce because Indonesian sellers are mostly micro and informal businesses with poor understanding of licensing procedures and regulations. Moreover, the Trade Law’s chapter on electronic transactions does not fill the gap left by GCPL regarding digital contracts and cross-border disputes.

A further effort was made to complete the regulatory framework by Government Regulation No. 80/2019 on E-Commerce (the E-Commerce Regulation), which aims to clarify existing laws and regulations specific to e-commerce. The regulation covers business responsibilities

in transaction; data collection; electronic advertising; confirmation of electronic transactions; personal data protection; secured electronic payments; shipping; exchange and cancellation procedures; and dispute settlement in electronic trade.

The E-Commerce Regulation also specifies administrative sanctions for the violation of regulated conduct, such as misleading advertisements. Administrative sanctions are progressive, beginning with warning letters, then escalating to inclusion in the supervisory priority list, blacklisting, being blocked temporarily by the authority, and ultimately revocation of business license. It also partially covers the gap left by both GCPL and the Trade Law by granting online consumers the right to ask for withdrawal from contracts within a cooling-off period, including the return of goods and the refund of payments. However, the regulation does not specifically exclude the right to return products and refund transactions involving personalized items, perishable goods, and digital content.

There are still more issues with the E-Commerce Regulation. First, it appears to overlap with—and even contradict—existing regulations, such as the EIT Law and Government Regulation No. 71/2019 on the Implementation of Electronic Systems and Transactions under the authority of the Ministry of Communication and Informatics (MOCI); and MOCI Circular Letter No. 5/2016 on the Limitations and Responsibilities of Platform Providers and Merchants in E-Commerce Using User-Generated Content Platforms. The E-Commerce Regulation differs with MOCI regulations in areas of data protection, illegal content, domain choice, and data localization.

“ The redress mechanism in the E-Commerce Regulation is inconsistent with that of the GCPL. ”

The redress mechanism in the E-Commerce Regulation is inconsistent with that of the GCPL. GCPL specifies that redress should be obtained primarily through the Consumer Dispute Settlement Agency (*Badan Penyelesaian Sengketa Konsumen* or BPSK) or district courts, while E-Commerce Regulation specifies redress through the Ministry of Trade. However, the latter does not yet have a mechanism to compensate customers but can only allow for revoking business licenses.

Another problem with the E-Commerce Regulation is that it does not penalize businesses for unclear and misleading product information, hidden fees and payments, or data breach. Instead, it renders the associated electronic contract invalid.

The E-Commerce Regulation was also issued with minimum public and private sector consultations (AmCham Indonesia, 2020; Interviews 5 & 11), which caused implementation challenges for businesses in the digital ecosystem since their diverse business models and institutional capacities are not reflected in the regulation. For example, the regulation requires all businesses to follow a complex process for business licensing; technical licensing; company registration (*Tanda Daftar Perusahaan*); standardization of goods and services; business conduct or code of practices; and other requirements stipulated in other laws and regulation. This process is onerous, especially for micro businesses.

Yet another problem is that the E-Commerce Regulation instructs e-commerce operators to prioritize transactions with domestic goods and services, improve competitiveness of domestic production, and facilitate the promotion of domestic goods and services. These instructions are hard to follow, especially for businesses that rely on user-generated-content (UGC), such as

Tokopedia and Bukalapak. In this business model, it is the users who control which products get sold or promoted within the community, but the regulation holds the business accountable for the results.

C. Competition Law and Policy

A competitive business climate is good for consumers. Companies prioritize improving their customers' experiences by investing in innovation, product or service variety, and productivity. In this environment, businesses grow while consumers enjoy lower prices, greater choices, and a higher quality of goods and services.

The Law of the Republic of Indonesia No. 5/1999, the Ban on Monopolistic Practices and Unfair Business Competition, aims "to maintain public interest and improve the efficiency of the national economy as one of the means to improve public welfare" (Article 3a) but it does not explicitly mention consumer protection. Enforcing this law is the responsibility of the Commission of the Supervision of Business Competition (*Komisi Pengawas Persaingan Usaha* or KPPU), an independent body responsible to the President.

Since the KPPU has no specific mandate to protect Indonesian consumers or to follow-up on consumer complaints, there is no mechanism that would allow for using consumer complaints as an indicator of monopolistic or anti-competitive practices. Still, the KPPU views competition as a driver of innovation and customer service and maintains that the government needs to prevent anti-competitive behaviour. It states specifically that, "in the digital economy, governments and competition authorities must address the challenges of protecting and empowering consumers in a complex and rapidly developing online environment." (KPPU, 2017, p. 19).

D. Personal Data Protection and Cybersecurity

Online platforms offer products and services, and indirectly capitalize on consumer data, which increases the risk of misuse of that data. Consumers in the e-commerce and fintech sectors are particularly vulnerable to cybercrimes including phishing (which extracts sensitive information from internet users), transaction fraud, and internet banking fraud (Banday & Qadri, 2007; Rahardjo, 2017). The corruption, compromise, or breach of payment data and user profile data puts consumers at risk of fraudulent use, unlawful use for advertising purposes, or even illegal data monetization. These risks make it clear that consumer protection in digital transactions requires strong personal data protection and cybersecurity.

Despite general provisions in the EIT law, specific laws on personal data protection, data sovereignty, and other cybersecurity issues have not been laid out in a clear framework. Government initiatives have instead been uncoordinated and siloed (UNCTAD, 2019b; Rahardjo, 2017). Personal data protection is covered by 32 different laws and their associated regulations. The complicated nature of this coverage hinders effective enforcement. Moreover, regulations on cybersecurity only exist for the defense sector, but not for the commercial, public sectors, and general use.

The corruption, compromise, or breach of payment data and user profile data puts consumers at risk of fraudulent use, unlawful use for advertising purposes, or even illegal data monetization.

A Personal Data Protection Bill and a Cybersecurity and Cyber Resilience Bill are being debated in parliament as part of the legislative agenda (Prolegnas) 2020–2024. The Personal Data Protection Bill is Indonesia’s first comprehensive privacy bill. It includes principles of data protection; the rights of data owners; the responsibility of data controllers, processors, and third parties; provisions on data processing and transfers; prohibitions, exemptions, and penalties; and the role of the government.

The Cybersecurity and Cyber Resilience Bill covers the principles of cybersecurity; the regulators/administrators; the governance of risk mitigation; cyber threat response; standards and enforcement; compensation for cyberattacks; the role of the National Cyber and Crypto Agency (*Badan Siber dan Sandi Negara* or BSSN); and prohibitions and sanctions. This bill also includes various certification, accreditation, and licensing obligations for businesses through BSSN. However, the bill does not address the need for multi-sectoral cooperation and coordination, instead focusing on the authority of BSSN.

D. Fintech Regulations

In the financial sector, Law of the Republic of Indonesia No. 21/2011 on Financial Services Authority (*Otoritas Jasa Keuangan* or OJK) established OJK as responsible for supervising financial markets and protecting financial service consumers. The chapter on consumer protection mandates that OJK educate consumers, prevent violation of consumer rights, provide a consumer complaints mechanism, and provide legal advocacy or defense for consumer disputes and redress in the financial market.

OJK has since established a consumer information center, guidelines for internal dispute resolution in the financial sector, and avenues for mediation, adjudication, and arbitration through Alternative Dispute Resolution Institutions (*Lembaga Alternatif Penyelesaian Sengketa* or LAPS). LAPS can be established either by a financial institution in coordination with sectoral associations, in collaboration with other associations of financial institutions, or as a self-regulatory institution by an association, under OJK’s supervision. LAPS’ service can be free for small claims. By encouraging internal dispute resolution between financial institutions and their customers through LAPS, OJK provides options for consumers and businesses to resolve disputes more quickly and at a lower cost than if they were to rely on the courts. Six LAPS have been formally acknowledged by OJK since 2016.

To govern e-lending, OJK established Regulation No. 77/POJK.01/2016 on Money Borrowing-Lending Services in Financial Information and Technology Sector (POJK P2P Lending) and OJK Regulation No. 13/POJK.02/2018 on Digital Financial Innovations in the Financial Services Sector. These two regulations specify the role of fintech associations; establish fundamental standards of consumer protection, especially the disclosure and transparency of information about products and services; non-discriminatory treatment; complaint handling and consumer dispute settlement; service reliability and fraud prevention; and personal data protection and cybersecurity. However, gaps that could undermine consumer protection in fintech have been identified in the regulatory environment, especially related to new developments in the fintech industry such as new lending models (Suleiman, 2019, p. 36).

The OJK regulations cover all fintech sectors except e-payments, which are regulated by the central bank (Bank Indonesia or BI) through BI Regulation No. 18/40/PBI/2016 on Implementation of Payment Transaction Process (*Penyelenggaraan Pemrosesan Transaksi Pembayaran*) and BI Regulation No. 20/6/PBI/2018 on Electronic Money (E-Money). Bank Indonesia makes it the responsibility of e-payment platforms to provide a secure payment system, but this overlaps with the authority of the OJK to supervise financial institutions as stipulated in the OJK Law (No. 21/2011). Without better coordination, it is unclear who is responsible and it is easier for this responsibility to fall through the cracks.

INSTITUTIONAL FRAMEWORKS IN CONSUMER PROTECTION

A. Cross-Sectoral Coordination

Indonesia's consumer protection policy in e-commerce and fintech requires coordinated and concerted efforts across different ministries and agencies, including the Ministry of Trade (MOT), Ministry of National Development Planning (Bappenas), Ministry of Communications and Informatics (MOCI), Coordinating Ministry for Economic Affairs (CMEA), Financial Services Authority (OJK), and the central bank (BI). In an effort to coordinate the work of these government entities, the Indonesian government launched the National Strategy of Consumer Protection (*Strategi Nasional Perlindungan Konsumen* or Stranas-PK) through Presidential Regulation No. 50/2017. Shepherded by MOT and Bappenas, Stranas-PK covers policy targets and directions, strategies and priority sectors for the implementation of consumer protection. After an initial period of three years (2017-2019), it is meant to cover a period of five years.

The Stranas-PK 2017-2019 is formulated as National Action for Consumer Protection (*Aksi Nasional PK*), which is guided by Presidential Instruction. Presidential Instruction must then be translated and implemented by the different ministries and agencies. Progress is monitored through reporting every six months. In spite of this, implementation of Stranas-PK faces challenges caused by a lack of coordinated planning, consultations, or evaluation of progress.

Generally, policy analysis, decision making, and coordination are not conducted sequentially in Indonesia (Blomkamp et al., 2017). CMEA tries to address this by holding an informal Consumer Protection Forum (*Forum Perlindungan Konsumen* or Forum PK) every 1–2 months, with different ministries/agencies in rotation as the host (CMEA, 2019; Interviews 4 & 8). The complexity of overlapping and sometimes contradictory laws and regulations by regulators and policymakers (see Appendix 2) aggravates the challenge of dealing with uncoordinated laws and regulations. When the authority and implementation of laws and regulations are not clearly laid out and when they do not properly delineate authorities and responsibilities of the institutions involved, there is a substantial risk that institutions will interpret them differently. Sectoral regulators are generally occupied with their own sectoral policy objectives and prioritize their sectoral goals instead of addressing consumer protection issues (UNCTAD, 2019b; Interviews 2, 8 & 10). While implementation of Stranas-PK has been slow, a recent effort aims to renew Stranas-PK 2020–2024 to update the context and incorporate digital economy issues.

The E-Commerce Roadmap 2017–2019 (Presidential Regulation No. 74/2017) was another attempt to harmonize regulations in the e-commerce sector including consumer protection. A Steering Committee (*Komite Pengarah*) involving 19 government entities is responsible for implementing the roadmap and reports to the President every six months.

The Steering Committee has achieved two of the three consumer protection targets: enacting an electronic trade regulation and developing a National Payment Gateway (*Gerbang Pembayaran Nasional* or GPN). The remaining target is the improvement of consumer confidence through a comprehensive legal framework that accommodates electronic certification, an accreditation process, and online dispute resolution (ODR). Like Stranas-PK, the E-Commerce Roadmap has

failed to coordinate government entities and unlike Stranas-PK, it does not specify a renewal or follow-up mechanism. As a result, a new roadmap, initially aimed to be enacted in 2019, has not been discussed extensively by the related government entities.

B. Consumer Protection Institutions

GCPL mandates the establishment of three non-governmental agencies to ensure consumer protection: the National Consumer Protection Agency (*Badan Perlindungan Konsumen Nasional* or BPKN); the consumer association (*Lembaga Perlindungan Konsumen Swadaya Masyarakat* or LPKSM); and the Consumer Dispute Settlement Agency (*Badan Penyelesaian Sengketa Konsumen* or BPSK). GCPL mandates that LPKSM and BPSK be set up at the district level, however Law of the Republic of Indonesia No. 23/2014 on Regional Government mandates that funding and supervision must come from the provincial government. The establishment of these bodies delegates powers to a statutory authority (BPKN) and to local jurisdictions (LPKSM and BPSK).

BPKN is an independent authority directly responsible to the President to formulate and recommend consumer protection policies (Government Regulation No. 4/2019 on BPKN). BPKN was initially allocated IDR 25 billion (USD 1.75 million) in 2019 by the state budget, but only IDR 22 billion (USD 1.54 million) of that was available (Interview 8). Despite enactment of a new BPKN regulation (Government Regulation No. 4/2019 on BPKN), BPKN's budgeting is still under MOT's purview, and this has limited their ability to develop education and awareness programs or knowledge-management systems to provide consumers with relevant information (Interview 8).

Between 2005 and April 2020, the government adopted only 41 of 186 BPKN recommendations (BPKN, n.d.; Interview 8) for government regulations. The remaining recommendations have yet to receive a formal response from responsible government entities. In 2019 alone, BPKN gave 20 recommendations in nine sectors, including the digital economy, but only seven have been discussed by the relevant institutions (Interview 8). Sectoral regulators are not mandated to respond to BPKN recommendations.

Developing countries like Indonesia generally experience the challenge of managing a fast-growing consumer class that is exposed to risks of ineffective consumer protection. Limited coordination between relevant ministries and agencies makes it more difficult to discipline businesses and set up effective dispute resolution mechanisms. At the same time, BPKN and other relevant stakeholders (including consumer associations) face constraints that hamper their ability to raise consumer literacy at a speed sufficient to prepare consumers for their quickly growing access to goods and services through the digital economy (Pangestu & Dewi, 2017; Purbo, 2017). Further, LPKSM and BPSK, which are responsible for improving consumer literacy at the local level, are not available in all regions. Only 66.7% of districts have BPSK and only 65.5% of that existing BPSK were operating in 2017 (Bappenas, 2017).

“ Indonesian consumers know some of their rights and obligations but have not applied this understanding to their consumption choices or to fight for their consumer rights. ”

According to both the Financial Literacy Index⁵ and the Financial Inclusion Index,⁶ Indonesia’s performance improved between 2013 and 2019, but an increasing gap between literacy and inclusion indices indicates that the proliferation of financial products increased faster than improvements in consumer literacy. This means consumers may utilize financial products without fully understanding its terms and conditions, for example the interest rate in e-lending. The Indonesian Consumer Empowerment Index⁷ (*Indeks Keberdayaan Konsumen* or IKK), published by the Indonesian Ministry of Trade, is at 40.41, with a scale of 0 indicating that consumers are not empowered to 100 indicating consumers are strongly empowered. The scores are even lower in certain regions, such as Gorontalo (22.89) and North Maluku (23.14). Indonesia’s overall index is far below that of the European Union (51.31), Malaysia (56.9), and South Korea (64) (IPB, 2019). This means Indonesian consumers know some of their rights and obligations but have not applied this understanding to their consumption choices or to fight for their consumer rights. Low performance on this index is a result of poor understanding of regulations and obligations; lack of awareness of consumer rights institutions; uninformed buying behavior; and reluctance to complain (Bappenas, 2017; IPB, 2019). Similar results were generated by the ASEAN Consumer Empowerment Index (ACEI), slated to be published in May 2020.

Low consumer literacy levels are being addressed by the National Mid-term Development Plan (*Rencana Pembangunan Jangka Menengah Nasional* or RPJMN), which is a five-year plan produced by the Indonesian government. RPJMN 2020–2024 was enacted in January 2020 via Presidential Decree No. 18/2020 and features strategic priority projects in the digital economy. E-commerce transactions were targeted to reach volumes of IDR 260 trillion (USD 18.25 billion) in 2020 and IDR 600 trillion (USD 42.11 billion) in 2024, or 4.7% of GDP. The government’s development plan counts on digital technology to improve Indonesia’s content-based industry and social assistance mechanisms, while it aims to increase digitalization in rural areas and to establish a cybersecurity infrastructure (Table 2).

⁵ OJK (2013) defines the Financial Literacy Index as an indicator that shows the level of knowledge, skills, and confidence of the public with regards to financial services institutions and their products and services. The index also provides information on the level of public awareness of features, benefits and risks, and their rights and responsibilities as users of financial products and services. OJK calculated the index by doing a National Survey that was administered to respondents in 34 provinces.

⁶ Under the OJK’s National Survey (conducted with the Financial Literacy Index), the Financial Inclusion Index measures the access of respondents to financial products and services.

⁷ IKK measures consumers’ awareness and understanding of their rights and obligations, as well as the ability to interact with the market. The indicators include information searching; knowledge of consumer protection laws and institutions; preference and choice; buying attitude; the preference for domestic products; willingness to express opinions; and complaint behavior. Based on the IKK score, consumers are categorized as “aware” (IKK 0.0-20.0), “understand” (IKK 20.1-40.0), “able” (40.1-60.0), “critical” (IKK 60.1-80.0), or “empowered” (IKK 80.1-100.0) (MOT, n.d.; IPB, 2019).

Table 2.
Strategic Priority Projects Related to the Digital Economy

Strategic Priority Project	Digital Economy
No. 1: Industry 4.0 in five sub-sectoral priorities	Use of digital technology to improve productivity and competitiveness of content-based industry
No. 18: Integration of social assistance towards a comprehensive social protection scheme	Digitalization of social assistance and progress of the National Non-Cash Movement (<i>Gerakan Nasional Non-Tunai</i> or GNNT). Support for Industry 4.0
No. 26: Infrastructure in Information and Communication Technology (ICT) to support digital transformation	Improvement of digital access in 5,052 rural areas (283 transmission unit locations)
No. 40: Strengthening the Information Security Operations Center and establishing 121 Computer Security Incidents Response Teams	Provision of cybersecurity information and cybersecurity complaints reports. Establishment of data sharing platforms used by government, private sector, and cyber communities

Source: Appendix II Presidential Decree No. 18/2020

The RPJMN⁸ sets a target for MOT to conduct training and education for 6,500 consumers, 500 businesses, and 330 consumer protection institution staff members annually through consumer protection and trade compliance programs by 2024. The expected cost of this program is IDR 95.9 billion (USD 6.73 million), almost four times the current annual budget of BPKN.

Comprehensive training materials and effective consumer protection mechanisms need to be designed before the implementation of these programs.

C. Private Sector Engagement in Consumer Protection

Consumer protection should not be seen as a burden for corporate growth. While digital innovation provides opportunities for businesses, a lack of consumer protection and unethical practices can undermine both corporate credibility and businesses' customer base (ASEAN, 2020).

The profit motive has pushed digital industries to protect their customers even without government intervention. Some online marketplaces require Indonesian sellers to respond to consumer complaints in less than 24 hours or provide additional time for refund requests during Chinese New Year. Most operators and sellers understand that consumer satisfaction will keep them in business. Self-regulation in the private sector makes an important contribution to protecting consumers' rights, working in the same direction as existing regulations (Barkatullah & Djumadi, 2018).

While digital innovation provides opportunities for businesses, a lack of consumer protection and unethical practices can undermine both corporate credibility and businesses' customer base.

⁸ Appendix III Presidential Regulation No. 18/2020, page 090.B.15

In e-commerce, most complaints are handled by customer service departments. Business associations, such as the Indonesian E-Commerce Association (idEA), request that members provide complaints mechanisms, even if only through instant messaging services in newly established e-commerce companies (Interview 6). For instance, Google maintains an advertisement report system that detects prohibited content and prevents exploitation of their users. The company banned nearly 600 applications that used adware plugins to send aggressive ads to users in 2020 (Bjorke, 2020). idEA and the Indonesian Digital Association (IDA) have addressed issues even before they are regulated by the government, for example, issuing takedown notices on illegal content and advertisement in e-commerce (idEA, 2018; Interviews 5, 6 & 12).

In Indonesia's e-commerce and fintech sectors, there are four major associations that work closely with the government: the Indonesian E-Commerce Association (idEA); Indonesian Fintech Association (*Asosiasi Fintech Indonesia* or AFTECH); Indonesian Fintech Lenders Association (*Asosiasi Fintech Pendanaan Bersama Indonesia* or AFPI); and Indonesian Sharia Fintech Association (*Asosiasi Fintech Syariah Indonesia* or AFSI). The latter three associations are fintech associations.

idEA does not have an internal code of conduct yet. Members use different business models and a variety of business practices (Interview 6). The fintech associations, however, established internal codes of conduct for their members supported by OJK and each associations' working groups (Interviews 7, 9 & 10). The codes of conduct are mainly focused on ensuring consumer protection, data protection, and financial inclusion (AFTECH, 2018; Interview 9).

OJK Regulation No. 77/2016 allows AFPI to govern its members. AFPI caps borrowing fees at a flat interest rate of 0.8% per day and total borrowing fees and penalties at 100% of the principal borrowing value. The association also provides a consumer complaints system via a call center, a website, and e-mail to report violations of the code of conduct. AFPI also provides a platform for data sharing in the industry called "Fintech Data Center" (FDC) for assessing customers' creditworthiness without accessing sensitive data on their phones. FDC is collected by AFPI's members to detect and prevent prospective customers from over-lending by lending on many P2P lending platforms. The data collection includes passing the e-KYC (know your customer) verification process and limitations on personal data identification, such as Taxpayer Identification Number (*Nomor Pokok Wajib Pajak* or NPWP), National Identity Card Number (*Kartu Tanda Penduduk* or KTP), and creditworthiness of the borrower.

AFPI, AFTECH, and AFSI have also agreed on a general code of conduct that applies to members of all three associations (AFTECH, 2019). The joint code of conduct covers standards and guidelines for principles of responsible business conduct in consumer protection; personal data protection and privacy; cyber risk mitigation; and minimum complaint handling mechanisms (AFTECH, 2019). The code of conduct harmonizes regulations for different fintech business models and addresses the fact that certain stipulations of OJK Regulation No. 77/2016 are not relevant for Sharia-based fintech. OJK has facilitated a principle-based and collaborative approach by recognizing associations as centers of collaboration (PwC, 2019).

D. Issues in Complaints and Dispute Resolutions Channels

Most complaints are handled by the private sector, but consumers need clear complaints and dispute resolution channels beyond those provided by the vendors that may be the source of consumer abuse. In the current institutional framework, consumers are presented with various uncoordinated complaints channels provided by government entities (see Appendix 3) and it is up to them to identify which agency is responsible for handling their complaint. This is likely the main reason for the low number of complaints through government avenues (illustrated in Table 1).

In the current institutional framework, consumers are presented with various uncoordinated complaints channels provided by government entities.

On National Consumer Day 2018, MOT launched a one-stop web portal to manage consumer complaints and consultations involving nine ministries (MOT, n.d.; MOCI, 2018). That year, the portal received 1,771 complaints, which were directed to the relevant ministries for follow-up (UNCTAD, 2019b). Unfortunately, the portal was eliminated in 2019 due to weak inter-agency coordination, especially in maintaining the server (Interview 4).

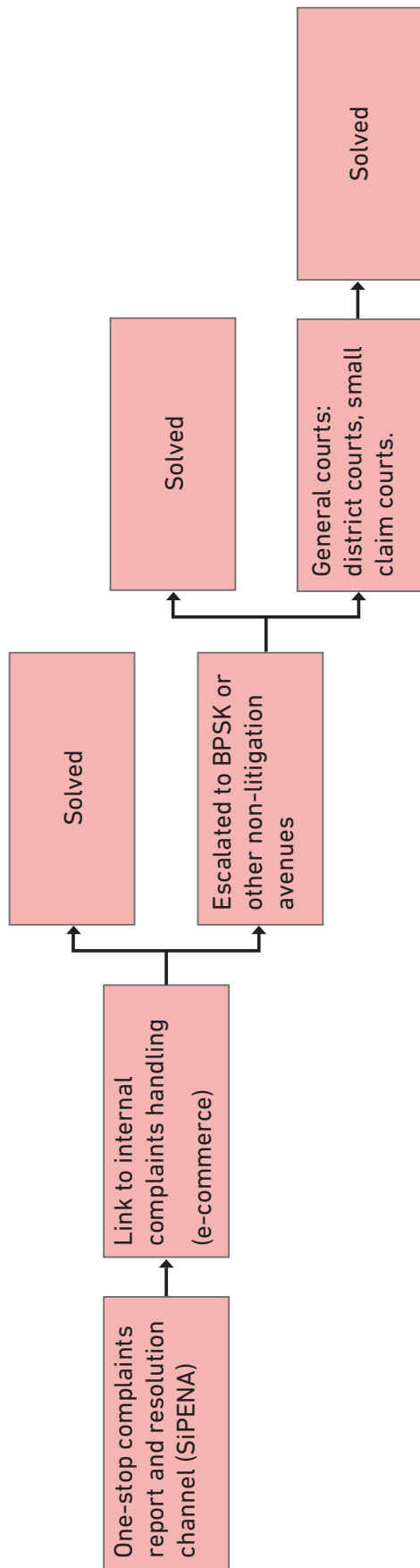
When communication between business and consumers fails, general complaints can be escalated to BPSK, while financial services disputes can be addressed to LAPS for non-litigation efforts such as mediation, arbitration, and reconciliation.

When non-litigation efforts fail, BPSK or LAPS can escalate the effort to district courts, while small-claims courts (*Acara Gugatan Sederhana*) are available for small disputes with transaction values under IDR 200 million (USD 14,037). However, these litigation mechanisms are hardly suitable for digital transactions since they require that the plaintiff and the defendant reside in the same jurisdiction (district) and most digital transactions are conducted between regions.

The Indonesian electronic justice system (E-Court), under the Supreme Court, could offer a solution but because they still require physical presence in courts they are expensive to use. They may still be the best option—compared to conventional courts, E-Court only requires offline presence in four out of 15 meetings and trial sessions. In addition to requiring a physical presence, only registered lawyers can file online lawsuits directly on the E-Court website, although plans exist to make these courts accessible for the public in the future (Supreme Court, n.d.). For the time being, non-lawyers must go to district courts to apply for litigation through the E-Court desk. Notwithstanding the challenges of using the E-Court system, it is a mechanism with untapped benefits for consumer protection and dispute resolution.

An integrated dispute resolution system called *Sistem Informasi Pengaduan Konsumen Nasional* or “SiPENA” is being developed by MOT and BPKN. SiPENA is designed to be a one-stop complaint mechanism for consumers that will integrate internal complaint mechanisms of e-commerce operators (Interviews 4 & 8). SiPENA plans to gather and integrate data from different ministries to escalate unresolved complaints to BPSK or district courts (Interview 8).

Figure 1.
SiPENA Prototype Mechanism



Sources: Interviews 4 & 8 (2020).

RECOMMENDATIONS

Indonesia benefits from immense growth in e-commerce and fintech, but this growth suffers as a result of a weak consumer protection regime. Insufficient support for consumer protection stifles consumer confidence in the digital economy. The promotion and protection of digital consumer rights not only plays a pivotal role in ensuring the welfare and well-being of Indonesian citizens—it is indispensable for maintaining the competitiveness of Indonesia’s e-commerce companies.

In order to strengthen the regulatory and institutional framework for consumer protection, the government should consider the following recommendations:

1. Improvement of the legal framework for digital economy

Revision of GCPL

The planned revision of the GCPL should ensure that consumers have a consistent level of protection in offline and online transactions. In e-commerce marketplaces, more so than in offline transactions, intermediary third parties play an important role in mediating disputes and facilitating consumer redress. GCPL does not acknowledge the role of third parties, and it is critical that their consideration be included as part of its revision.

Furthermore, the revised GCPL must address online reselling; the general use of the internet; data collection rules; fair terms of digital contracts; consumer-to-consumer transactions; cross-border transactions; and digital product transactions of software and media. The government must fill the gaps in existing e-commerce regulations, exclude personalized or perishable products from return policies, and ease complicated licensing requirements with which it is too onerous for small companies to comply.

The revision of the GCPL must be completed as quickly as possible in order to address growth of the digital economy that has already outstripped the capacity of governments and the urgency of problems stemming from legal loopholes. International and regional guidance and good practices, notably from ASEAN and global counterparts, should be considered in the consultation and drafting process.

“The revision of the GCPL must be completed as quickly as possible in order to address growth of the digital economy that has already outstripped the capacity of governments and the urgency of problems stemming from legal loopholes.”

Issuing regulations for a secure digital environment

Digital consumer protection requires personal data protection and cybersecurity. The National Parliament should seek input into and prioritize the Personal Data Protection Bill and the Cybersecurity and Cyber Resilience Bill, both of which are included in the national legislative plan (Prolegnas) for the parliamentary term 2020–2024.

The Personal Data Protection (PDP) Bill must establish high standards for data protection in a regime that ensures user consent, data security, and transparency. The bill must establish realistic standards for both businesses and consumers that:

- are based on actual risk and benefit scenarios of the data protection (risk-based approach);
- provide the industry with a collaborative platform used to connect, socialize, promote, and enable discussions, initiatives, and joint responses to compliance matters (collaborative compliance); and
- protect personally identifiable information (PII), such as names, contact details, and dates of birth. The protection of other data needs to be reconciled with the legitimate use of data to boost innovation. The flow, sharing, and transfer of data are required to ensure business development, but this should not undermine personal data protection and privacy.

The PDP Bill refers to the EU's General Data Protection Regulation (GDPR) which sets high standards for consumer data protection and privacy. Since GDPR has been widely used, using it in Indonesia would help to harmonize standards between countries, addressing some of the cross-border issues in the digital economy.

“The government must ensure that the Cyber Security Bill contributes to digital consumer data privacy.”

The government must ensure that the Cyber Security Bill contributes to digital consumer data privacy. The bill should clearly specify the authority of the National Cyber and Crypto Agency (*Badan Siber dan Sandi Negara* or BSSN) and ensure it does not overlap with the rights and responsibilities of MOCI. Instead of focusing on complex licensing and enforcement procedures, the bill should focus on improving secure infrastructure for technology and information in the digital economy. This calls for an inter-agency approach.

2. Improving coordination between government entities

Coordination between government entities has been prioritized with Stranas-PK 2020–2024. The government should use insights from Stranas-PK 2017–2019, which provided progress evaluations every six months, when designing its strategic plans for 2020–2024.

Stranas-PK 2020–2024 must supply transparent and well-coordinated plans for regulatory improvements and law enforcement. It should incorporate digital economy issues as part of a broader policy framework rather than focusing on e-commerce like Stranas-PK 2017–2019. Explicitly delineating the authority of relevant ministries will not only improve coordination, it will also help to avoid overlapping or contradictory regulations.

For example, Bank Indonesia is the key regulator for ensuring secure electronic payments, and so Stranas-PK should explicitly delineate their responsibilities from those of other government entities, including the national police, OJK, MOCI, and MOT. Coordination with the National Police should lead to more consistent and effective measures to address loopholes in the cybersecurity system. The National Police are equipped with the authority to tackle cybercrime and investigates phishing and fraud in online transactions.

Monitoring and evaluation should focus on improving overall cross-sectoral coordination and delineating the ministries' roles instead of just updating the progress of each ministry in completing its own uncoordinated goals.

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Table 3.
Suggested Delineation of Regulatory Authority in Indonesia's Digital Economy
(Lead Agency Indicated in Bold)

Phase	Regulatory Elements	Responsible Entities
E-Commerce (including e-payments)		
Pre-purchase	Duties and disclosure	MOT , BPSK, BPKN, LPKSM, National Police
	Online advertising	MOT , Ministry of Finance (MOF), MOCI
Pre-purchase	Terms and conditions of transactions	MOT , MOCI, OJK, BI
	Transparent and secure payments	BI , OJK, National Police, MOT
	Data protection rules	MOCI ⁹ , OJK, MOT, National Police (Cyber)
Delivery/After-sale	Dispute resolution and redress	MOT , BPSK, BPKN, LPKSM, Supreme Court (Small Claims Courts, District Courts, E-courts)
	The right to withdraw/cancel	MOT , BPSK, BPKN, LPKSM
Fintech (except e-payments)		
Pre-purchase	Duties and disclosure standards (interest rates, transparency of penalties and fees)	OJK , AFPI, AFTECH, AFSI, MOCI, National Police, MOT, Ministry of Finance (MOF), LAPS, LPKSM, BPKN, Indonesian Investment Coordinating Board (BKPM), Ministry of Cooperatives and Small and Medium Enterprises (MOCMSE), National Prosecutor.
	Online advertising	
Payment	Terms and conditions of transactions	
	Transparent and secure borrowing and lending	
	Data protection rules	
Delivery/After-sale	Debt collection standards	
	Dispute resolution and redress	

⁹ Or Sectoral Supervisory and Regulatory Agency (*Instansi Pengawas dan Pengatur Sektor*) as stipulated in the PDP bill.

If the Stranas-PK fails to deliver the desired outcomes, an alternative is the establishment of a new task force (*Satuan Tugas* or *Satgas*) for the digital economy. This task force would serve to improve the interpretation, coordination, and implementation of sectoral laws and regulations in the digital economy. This task force could be established by the President, the Vice President, or CMEA to solve the cross-sectoral problems and signal the need for high-level buy-in.

The Investment Alert Task Force (*Satgas Waspada Investasi* or *SWI*) under the OJK provides a good example to emulate. *SWI* coordinates the work of 13 ministries and agencies, including MOT, National Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* or *BKPM*), MOCSME, MOCI, the National Prosecutor (*Kejaksaan Republik Indonesia*), and the National Police. *SWI* blocked 2,486 illegal peer-to-peer lending platforms from 2018 through April 2020 (OJK, 2020b). This coordination between relevant ministries has improved regulatory effectiveness and law enforcement.

3. Improving the follow-up of BPKN recommendations

BPKN faces challenges securing formal responses to their recommendations from government entities. There are three steps that can help improve their effectiveness and follow-up. First, BPKN could provide more detailed reports on their observations, research findings, and the results of focus group discussions, highlighting the importance and relevance of its recommendations for relevant ministries. By providing comprehensive reports, BPKN would be able to communicate their professional expertise on consumer protection issues.

If ministries do not formally respond to BPKN recommendations, then it might be more practical to address the recommendation to the task forces (*Satgas*) under which the ministerial departments work in order to complement their communication with sector regulators. BPKN recommendations regarding consumer protection in fintech, for example, should be submitted not only to OJK but also to *SWI*. *SWI* would then support BPKN in its efforts to follow up on consumer complaints.

Finally, BPKN should consider submitting their recommendations not only to the main regulator, but also to other ministries to whom the recommendation is relevant. For example, if the recommendation concerns the digital economy, BPKN should submit its recommendation not only to the Office of the President, but also to MOT, MOCI, and CMEA.

4. Engaging the private sector in the policymaking and promoting responsible business conduct

There are two steps in engaging the private sector in the regulation of the digital economy.

First, drafting and enforcing laws and regulations requires strong collaboration with private actors through public-private dialogue (PPD) (CIPE & NML, 2018). PPD allows businesses to contribute their expertise in a highly technical field to the rule-making process and facilitates better understanding of the mandates and scope of action of specific regulators. PPD will also improve their compliance with laws and regulations. By improving understanding, PPD will also improve compliance with laws and regulations.

Indonesia lacks an effective government-led mechanism for public-private dialogue (UNDP, 2017, p.41). When it comes to laws and regulations related to the digital economy, private sector players have reported that they are unable to provide input and so find their business models insufficiently represented (Interviews 5 & 11). The government can fill these gaps in communication by mapping different business models in the digital economy and inviting at least one private actor to represent businesses with each model for deliberations. This would help the government to receive comprehensive input for the drafting and subsequent enforcement of laws and regulations.

The second step for engaging the private sector is to facilitate and endorse responsible business initiatives. The e-commerce association idEA lacks an internal code of conduct and the government could help them work together to fill the gap. The government could help the association to draft principled guidelines that are in line with consumer protection laws and regulations. The government can also use its convening power to bring companies, associations, BPKN, and LPKSM together in order to draft the guidelines. Resulting guidelines should be simple and allow for the creative interpretation and adaptation to a variety of business models. They should ultimately promote a voluntary self-regulatory mechanism.

Alternatively, the guidelines may incorporate the OECD's Recommendation on Consumer Protection in E-Commerce (2016), the OECD (2018) Toolkit's Six High-Level General Principles, and ASEAN's Online Business Code of Conduct (2020). These three already-existing guidelines recommend that businesses voluntarily follow transparent and fair business, advertising, and marketing practices; ensure the quality and safety of products; provide effective processes for transaction confirmation and payment; provide internal complaints handling mechanisms and effective redress; and protect consumers from privacy and security risks.

A self-regulatory mechanism is crucial and a principled code of conduct adjusted to the local context would guide online businesses to act responsibly and fairly towards consumers (OECD, 2011). By encouraging responsible business conduct and ethical trade, the consumer confidence will likely increase and result in a stronger consumer base.

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5. Effective online dispute resolution through SiPENA

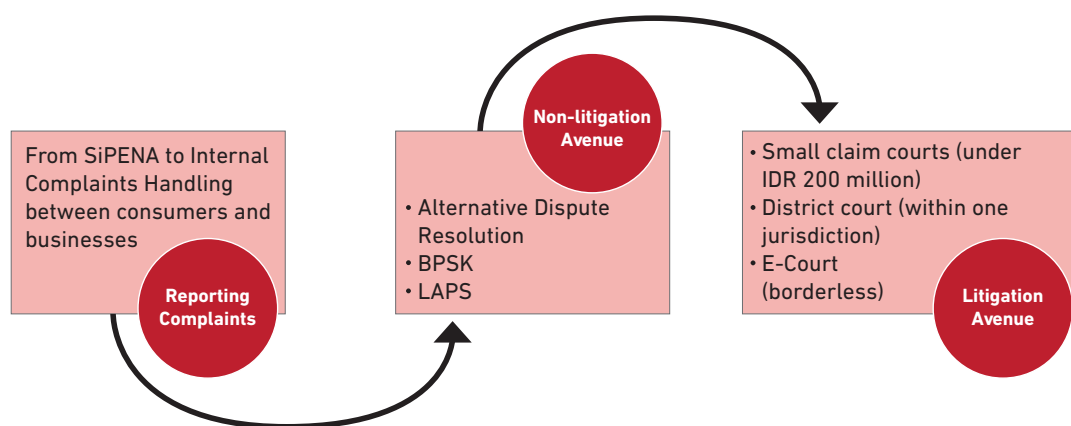
There are three steps through which SiPENA can gradually become an effective channel for Online Dispute Resolution (ODR). As discussed above, a comprehensive and functional ODR system should provide consumers with a channel to lodge complaints and obtain redress across jurisdictions. ODR can thereby close the loopholes of conventional dispute resolution that faces issues in funding, fees, and jurisdiction.

First, SiPENA should be used as a resource portal to explain and discuss key consumer issues. The platform should be interactive and simple to ensure its effectiveness. It can support the education of consumers and businesses about their rights and obligations in online transactions and support the improvement of digital literacy. For example, SiPENA can provide information on differences between payment options in e-commerce, helping consumers to identify the best payment options for their respective online transactions.

Next, the government should consider incorporating both non-litigation and litigation avenues for dispute resolution in SiPENA. This would be in line with discussions surrounding ODR mechanisms that aim to provide an accessible and efficient dispute resolution option for consumers, especially with e-commerce companies. Lessons from international and ASEAN discussions should be incorporated to setting up this system and interfaces with systems in different sectors and countries should be a long term goal.

Finally, E-Courts could take a role in consumer dispute resolution, reducing the costs for the disputants by reducing direct presence requirements in courts. This can serve as an initial step in the long-term development of an online portal that can evolve into a proper ODR mechanism.

Figure 2.
Recommendation Regarding Complaint Escalation through SiPENA



6. Designing effective training and education programs under RPJMN

Training programs for consumers and consumer protection agencies must enhance consumer literacy and build agencies' capacity. Training modules could be based on the UNCTAD Manual on Consumer Protection (2018), which has incorporated online transactions, or on materials for strengthening technical competency in consumer protection as developed by the ASEAN

Committee on Consumer Protection (ACCP). The training manuals should include training manuals on the use of phones, internet services, and digital platforms as well as manuals on gathering information, understanding labelling, safety, redress, electronic commerce, privacy, and data protection.

Since concerns about consumer protection disproportionately occur in less developed regions, the government should prioritize training in provinces with agencies that have yet to establish LPKSM or BPSK and in regions that rank lower in the Consumer Empowerment Index. These programs would not only improve consumer literacy and institutional capacity, they would also encourage the establishment of new consumer protection channels, especially in less developed regions. In addition, the training and education programs should include information about the characteristics of an online transaction, incorporating internet-related issues such as privacy, data protection, and cybersecurity.

Government should prioritize training in provinces with agencies that have yet to establish LPKSM or BPSK and in regions that rank lower in the Consumer Empowerment Index.

7. Reducing market entry barriers to ensure a growing and competitive digital economy

The digital economy thrives in a competitive environment in which companies are most driven to offer products and services for the benefit and welfare of consumers. Competition policy should complement consumer protection policies in order to ensure the welfare effects of competition are realized while also preventing harmful business practices (Huffman, 2010).

Competition and consumer protection policies are highly complementary, particularly in developing markets. If applied properly, they will reinforce one another (OECD, 2008). In the highly dynamic environment of digital markets, the government needs to consider three steps to ensure that regulatory and institutional frameworks in both policy areas are not contradictory.

First, there should be institutional coordination between competition and consumer-related government entities. In 2019, KPPU signed a memorandum of understanding (MoU) with the Ministry of Home Affairs (MOHA) and BPKN. An MoU with BPKN could reinforce advocacy efforts by gathering and analyzing consumer complaints received by either agency to form a better idea of the market and to better understand where anti-competitive practices may be taking place. This research could help formulate BPKN's response and recommendation. Further, an existing MoU between KPPU, MOCI, and OJK needs to be revised to include clear action and coordination plans for improving competition in the digital economy.

KPPU should further consider a MoU with MOT, BI, and LPKSM. This MoU would need to include action plans, reforms, and information and data sharing regarding consumer protection and competition policies. This could improve policy making as these government entities would better be able to identify anti-competitive practices in the e-commerce and e-payment system by clarifying MOT and BI authorities. MOT could then cooperate with KPPU to discipline business, raise consumer awareness, or take collective action with LPKSM. The agencies should work together to identify, alert, and discipline digital mergers that raise the risk of exploitation of online consumers—such mergers are common. In addition, KPPU should improve public and private understanding of the interdependence of competition and consumer protection policies.

The next step the government should take to harmonize the regulatory and institutional framework is to aim for regulations that lower barriers to entry for new businesses, promoting market competition. Unnecessary, complicated licensing requirements for businesses in e-commerce and fintech should be eliminated while maintaining defined standards of consumer protection. For example, antitrust regulations should not only measure higher prices, but consider other types of consumer harm, such as privacy breaches; insufficient personal data protection; reduced consumer choice; anti-competitive market structure; high switching costs; and lock-in effects (UNCTAD, 2019c, p.138). These standards should be applied without restricting innovation and market entry for online businesses.

Finally, in the medium to long term, the Law of the Republic of Indonesia No. 5/1999 on the Ban on Monopolistic Practices and Unfair Business Competition should be reviewed to accommodate the digital economy and to more prominently incorporate consumer protection issues where feasible. Without such a revision, new market participants and small competitors will face increasing challenges when trying to compete with dominant market players.

The next step the government should take to harmonize the regulatory and institutional framework is to aim for regulations that lower barriers to entry for new businesses, promoting market competition.

APPENDIX

Appendix 1 . Composition of Fintech in Indonesia

Fintech Lending ¹⁰	<ul style="list-style-type: none"> • Conventional: 149 • Sharia: 12 Total: 161 	Licensed and registered at OJK (as of 31 March 2020)
Fintech Payment ¹¹	49	Registered at BI (as of 17 April 2020)
Digital Financial Innovation/ <i>Inovasi Keuangan Digital</i> (IKD) ¹²	<ul style="list-style-type: none"> • Aggregator: 35 • E-KYC (Electronic Know Your Customer): 3 • Funding Agent: 1 • Financing Agent: 6 • Online Gold Depository: 1 • Claim Service Handling: 2 • Credit Scoring: 12 • Verification Non-CDD: 4 • Financial Planner: 7 • Blockchain based: 4 • Online Distress Resolution: 1 • Project Financing: 5 • Social Network and Robo Advisor: 1 • Tax & Accounting: 3 • Property Investment Management: 2 • Insurance Broker Marketplace: 1 • Regtech: 1 Total: 89 	Registered in OJK as of February 2020

¹⁰ OJK (2020a).

¹¹ Bank Indonesia (2020). *Informasi Perizinan Penyelenggara dan Pendukung Jasa Sistem Pembayaran* [Licensing Information for Provider and Supporter of Payment System Services]. Retrieved from: <https://www.bi.go.id/id/sistem-pembayaran/informasi-perizinan/uang-elektronik/penyelenggara-berizin/Contents/Default.aspx>

¹² The author obtained this data from an OJK Officer in February 2020.

Appendix 2 . Complexity of Digital Consumer Protection Regulations

Consumer Rights Issues	Main Responsible Governmental Bodies	Regulations
General consumer protection	Ministry of Trade	<ul style="list-style-type: none"> • Consumer Protection Law No. 8/1999 • Trade Law No. 7/2014 • Monopoly and Competition Law No. 5/1999 • Government Regulation No. 89/2019 on LPKSM (revision from Government Regulation No. 59/2001 on LPKSM) • Government Regulation No. 4/2019 on BPKN • Government Regulation No. 58/2001 on Guidance and Supervision of the Implementation of Consumer Protection • Presidential Decree No. 50/2017 on National Strategy on Consumer Protection • Presidential Instruction No. 2/2019 on National Actions on Consumer Protection • Ministerial Regulation No. 6/M-DAG/PER/2/2017 on BPSK
		<ul style="list-style-type: none"> • Civil Code [Kitab Undang-Undang Hukum Perdata], particularly chapter III, article 1365
	Local Government	<ul style="list-style-type: none"> • Local Government Law No. 23/2014
Consumer protection in electronic transactions	Ministry of Trade	<ul style="list-style-type: none"> • Consumer Protection Law No. 8/1999 • Trade Law No. 7/2014 • Government Regulation No. 80/2019 on e-commerce • Presidential Decree No. 50/2017 on National Strategy on Consumer Protection
	Ministry of National Development Planning (Bappenas)	<ul style="list-style-type: none"> • Presidential Decree No. 50/2017 on National Strategy on Consumer Protection
	Coordinating Ministry of Economic Affairs	<ul style="list-style-type: none"> • Presidential Decree No. 74/2017 on E-Commerce Roadmap
	Ministry of Communication and Informatics	<ul style="list-style-type: none"> • Electronic Information and Transaction Law No. 19/2016, revised from Electronic Information and Transaction Law No. 11/2008 • MOCI Circular Letter No. 5/2016 on the Limitations and Responsibilities of Platform Providers and Merchants in E-Commerce Using User-Generated Content
Privacy and personal data breach	Ministry of Communication and Informatics	<ul style="list-style-type: none"> • Electronic Information and Transaction Law No. 19/2016, revised from Electronic Information and Transaction Law No. 11/2008 • Telecommunication Law No. 36/1999 (Article 42) • MOCI Regulation No. 20/2016 on Personal Data Protection in Electronic System • Government Regulation No. 71/2019 on Implementation of Electronic System and Transaction <p style="font-size: small; margin-top: 5px;">Note: Privacy and personal data related regulations are discussed in 32 laws (see Aptika, 2019).</p>
	Ministry of Trade	<ul style="list-style-type: none"> • Government Regulation No. 80/2019 on e-commerce
Negative or illegal content (website, social media, games)	Ministry of Communication and Informatics	<ul style="list-style-type: none"> • Electronic Information and Transaction Law No. 19/2016, revised from Electronic Information and Transaction Law No. 11/2008 • Law on Pornography No. 44/2008 • MOCI Regulation No. 19/2014 on Negative Contents

Fintech	The Financial Services Authority (<i>Otoritas Jasa Keuangan</i>) (OJK)	<ul style="list-style-type: none"> • Financial Service Authority Law No. 21/2011 on the establishment of the Financial Services Authority (OJK) • OJK Regulation No. 37/POJK.04/2018 on Equity Crowdfunding • OJK Regulation No. 18/POJK.07/2018 on Consumer Complaints Services in the Financial Services Sector • OJK Regulation No. 13/POJK.02/2018 on Digital Financial Innovation in Financial Service. • OJK Regulation No. 12/POJK.03/2018 on the Implementation of Digital Services by Commercial Banks. • OJK Regulation No. 77/POJK.01/2016 on Information Technology-based Lending. • OJK Regulation No. 76/POJK.07/2016 on Raising Financial Literacy and Inclusion in the Financial Services Sector among Consumers and/or the Public. • OJK Regulation No. 1/POJK.07/2014 on Alternative Institutions for Dispute Resolution in the Financial Services Sector. • OJK Regulation No. 1/POJK.07/2013 on Consumer Protection in Financial Services Sector • OJK Circular Letter No. 22/SEOJK.02/2019 on the Appointment of the Association on Digital Financial Innovation • OJK Circular Letter No. 21/SEOJK.02/2019 on Regulatory Sandbox; • OJK Circular Letter No. 20/SEOJK.02/2019 on Mechanism of Digital Financial Innovation Recording; • OJK Circular Letter No. 31/SEOJK.07/2017 on Implementation of Activities in the Framework of Increasing Financial Inclusion in the Financial Services Sector • OJK Circular Letter No. 54/SEOJK.07/2016 on Monitoring Alternative Institutions for Dispute Resolution in the Financial Services Sector • OJK Circular Letter No. 7/SEOJK.07/2015 on Guidelines for Assessment of Alternative Institution for Dispute Resolution in the Financial Services Sector • OJK Circular Letter No. 14/SEOJK.07/2014 on Confidentiality and Security of Consumer Data and/or Personal Information • OJK Circular Letter No. 13/SEOJK.07/2014 on Standard Agreement (<i>Perjanjian Baku</i>) • OJK Circular Letter No. 12/SEOJK.07/2014 on Provision of Information for Marketing of Financial Products and/or Services • OJK Circular Letter No. 2/SEOJK.07/2014 on Handling and Resolution of Consumer Complaints on Financial Services • OJK Circular Letter No. 1/SEOJK.07.2014 on Provision of Education to Consumers and/or the Public to Improve Financial Literacy
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	<p>Indonesian Central Bank [<i>Bank Indonesia</i> (BI)] is responsible for licensing payment business model (e-money, e-wallet, payment gateway, remittance) or fintech carrying out business models outside the clearly defined model</p>	<ul style="list-style-type: none"> • Bank Indonesia Regulation No. 19/12/PBI/2017 on Implementation of Fintech • Bank Indonesia Regulation No. 20/6/PBI/2018 on Electronic Money (E-Money) • Information and Electronic Transaction Law No. 11/2008 • BI Regulation No. 18/40/PBI/2016 on Processing of Payment Transaction • BI Board Member of Governors Regulation No. 19/15/PADG/2017 on Procedures for Registration, Submission of Information, and Monitoring of Financial Technology Providers • BI Board Member of Governors Regulation No. 19/14/PADG/2017 on Fintech Regulatory Sandbox
Fraud, theft, cyber crime	<p>Indonesian National Police</p>	<ul style="list-style-type: none"> • Electronic Information and Transaction Law No. 19/2016 • Civil Code [Kitab Undang-Undang Hukum Perdata]
Online transportation safety	<p>Ministry of Transportation</p>	<ul style="list-style-type: none"> • Traffic and Road Transport Law No. 22/2009 • Government Regulation No. 74/2014 on Road Transport • Ministerial Regulation (MOTrans) No. 118/2019 on Special Rental Transportation; • Ministerial Regulation (MOTrans) No. 12/2019 on Safety Protection for Motorcycle Users Used for Public Interest

Appendix 3. Complaint Mechanisms Related to E-Commerce and Fintech

Consumer Rights Issues	Responsible Governmental Bodies	How	Note
General consumer protection	Ministry of Trade	DJPKN - MOT http://siswaspk.kemendag.go.id (not accessible anymore) E-mail: pengaduan.konsumen@kemendag.go.id WhatsApp : 0853 1111 1010 www.konsumen-indonesia.id (launched April 2018, but not available anymore) http://sisdalturang.kemendag.go.id/admin/homex/index/190 (list of products that fulfils Indonesian National Standard (SNI))	There are no clear lists of product recalls
	BPKN	https://www.bpkn.go.id/complaints/new	Complaints can be also reported through consumer association: http://pelayanan.ylki.or.id/
	National Agency of Drug and Food Control	https://ulpk.pom.go.id/	For food and drugs only
Data protection	Ministry of Communication and Informatics	https://ppid.kominfo.go.id/jenis-informasi/inf-berkala/pengaduan-masyarakat1/ https://layanan.kominfo.go.id/microsite/aduan-brti (spam call/messages that are indicated to be fraud attempt)	Not specifically for data protection, but for telecommunication in general. Data on e-payment is also regulated by Indonesian Central Bank. The responsibility is also overlapping with the Indonesian National Police.
Negative contents (website, social media, games)	Ministry of Communication and Informatics	https://aduankonten.id/	Based on EIT Law
Fintech	The Financial Services Authority [Otoritas Jasa Keuangan (OJK)]	https://konsumen.ojk.go.id/FormPengaduan	For P2P lending fintech, AFPI (association) provides complaint mechanism on: https://afpi.or.id/pengaduan
Fraud or illegal activities in financial/fund management or investment	Satgas Waspada Investasi by seven ministries and institutions	https://waspadainvestasi.ojk.go.id/site/contact	Regulators: OJK, MOT, BKPM, MOCSME, MOCI Law enforcer: Prosecutors' Office, Police
Electronic transaction (e-payment)	Indonesian Central Bank [Bank Indonesia (BI)]	https://www.bi.go.id/id/edukasi-perlindungan-konsumen/form-pengaduan/Pages/formulirPengaduanKonsumen.aspx	Consumer should have expected loss more than IDR 500 million
Fraud, theft, cyber crime	Indonesian National Police	https://www.patrolisiber.id/report/my-account	Designed to report computer crime and computer-related crime. Fraud in e-signature and e-payment can also be reported through the link

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Interviews

Interview 1 – Ministry of Communication and Informatics

Interview 2 – Indonesian Consumers Foundation [*Yayasan Lembaga Konsumen Indonesia* (YLKI)]

Interview 3 - Centre for Law and Policy Studies [*Pusat Studi Hukum dan Kebijakan* (PSHK)]

Interview 4 – Ministry of Trade

Interview 5 – A multinational technology company

Interview 6 – Indonesian E-commerce Association (idEA)

Interview 7 - The Financial Services Authority [*Otoritas Jasa Keuangan* (OJK)]

Interview 8 - National Consumer Protection Agency [*Badan Perlindungan Konsumen Nasional* (BPKN)]

Interview 9 – Fintech Indonesia [*Asosiasi Fintech Indonesia* (AFTECH)]

Interview 10 – The Financial Services Authority [*Otoritas Jasa Keuangan* (OJK)]

Interview 11 - A technology company

Interview 12 - An e-commerce company

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