



Analysis of Tiktokshop Closure Policy in Social Commerce Al Istihsan's Perspective

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Abstract - The closure policy of TikTokShop in the realm of social commerce presents a compelling subject for analysis through the lens of Al Istihsan. This study adopts a normative juridical approach and employs a library research method to examine the implications of this policy on legal frameworks, particularly Permendag No.31/2023, and the Al Istihsan concept in Islamic law. This paper begins by briefly introducing the TikTokShop closure policy and emphasizes its significance within the current digital landscape. It then outlines the methodology used, elaborating on the normative juridical approach and detailing how the library research method was applied, including the utilization of primary legal materials related to TikTokShop operations and Permendag No.31/2023. The analysis section scrutinizes the regulatory violations committed by TikTokShop under Permendag No.31/2023. Additionally, it explores the concept of Al Istihsan, focusing on its principles of justice, public interest, and equitable application of the law. The findings highlight discrepancies between the closure of TikTokShop and the principles advocated by Al Istihsan. Through comprehensive library research encompassing diverse sources such as books, journals, articles, and online resources, this study contributes to a deeper understanding of the legal repercussions of the TikTokShop closure policy. It underscores the relevance of Al Istihsan as an alternative perspective for evaluating legal actions in contemporary contexts. This research aims to provide valuable insights for researchers, legal practitioners, and policymakers involved in formulating balanced and effective regulations amidst the evolving digital environment.

Keywords: Al istihsan, Social Commerce, TiktokShop

I. INTRODUCTION

The emergence of TikTok Shop in Indonesia on April 17, 2021, marked a significant advancement in the realm of e-commerce, particularly within the domain of social commerce. This feature, integrated directly into the TikTok platform, revolutionized how micro, small, and medium enterprises (UMKM) engaged with consumers by enabling them to showcase and sell products through dynamic in-feed videos, live streams, and dedicated product catalog tabs. One notable collaboration early on exemplified this innovation when TikTok Shop partnered with Nagita Slavina for the "Toko Mama Gigi" live shopping program, underscoring its role in facilitating direct interaction between sellers and buyers. (Septian et al., 2023)

However, in September 2023, the Indonesian government imposed restrictions prohibiting TikTok Shop from conducting direct transactions on media platforms. This regulatory decision was framed within broader efforts to institute more robust controls over online trading mechanisms, aiming to enhance consumer protection and market integrity. Consequently, TikTok Shop's role shifted exclusively to promotional activities, disrupting its operational model and impacting UMKM and the broader TikTok e-commerce ecosystem. (Bathni et al., 2022)

This ban posed significant challenges. For UMKM, TikTok Shop had served as a pivotal avenue for direct sales and customer engagement, now hindered by regulatory constraints.

The resultant uncertainty within the TikTok e-commerce community prompted a search for alternative platforms, intensifying the urgency for adaptability among affected businesses.(Ramli et al., 2020)

Amidst these challenges, the closure of TikTok Shop also spurred competitive innovation as users and merchants explored alternative platforms, fostering a climate of adaptation and market diversification. Nevertheless, the transition away from direct transaction capabilities has underscored the complexities of regulatory compliance in the digital economy, necessitating nuanced approaches to balance innovation with regulatory imperatives.(Garaika, 2020)

In this study, adopting the perspective of Al Istihsan, we aim to critically examine the implications of the Indonesian government's regulatory intervention on TikTok Shop. By elucidating the motivations behind these regulatory measures and their alignment with broader trends in online commerce governance, this research seeks to provide a comprehensive understanding of the evolving regulatory landscape and its impact on digital platforms and UMKM in Indonesia.(Yanti & Yusnaini, 2018)

II. METHOD

Analysis of the TikTokShop closure policy from an al istihsan perspective involves several important elements, including the type and approach of research, legal materials, and the research and analysis methods used.(Khisom, 2019). The writer uses a normative juridical approach in this research. This approach is known as normative legal research, which emphasizes the analysis of applicable legal norms. In this context, the research focuses on the legal aspects related to the closure of TikTokShop.(Indah Lestari et al., 2022). The legal materials in this analysis are the primary legal provisions that regulate TikTokShop. The author emphasized that the closure was based on a violation of Minister of Trade Regulation No.31/2023. Apart from that, the author also refers to the principle of al istihsan as relevant legal material in assessing this policy.(Imam Fawaid, 2020)

The research method used is library research or literature review. This research was conducted by detailing information from various sources, including library books, magazines, journals, articles and internet sources related to the issue of closing TikTokShop. With this approach, the author can summarize and analyze in-depth legal understanding regarding the policy.(Putri, 2020). Overall, the analysis of the TikTokShop closure policy from an al istihsan perspective includes a normative juridical approach, primary legal materials involving Minister of Trade Regulation No.31/2023, and literature review methods as a way to investigate and analyze the legal implications of the policy.(Hidayat, 2018).

III. RESULT AND DISCUSSION

I.TikTok Shop Social Commerce

TikTok Shop shows differences from other e-commerce applications and has a significant impact on society. This feature differentiates itself from Instagram Shopping and Facebook Shop by carrying out transactions directly within the TikTok application, from product introduction, product selection, to the transaction process. TikTok Shop also offers various brands and products for sale. However, the closure of TikTok Shop in Indonesia has had a striking impact, especially on micro, small, and medium enterprises (MSMEs) and users who have lost access to the various products offered by TikTok Shop. The ban on TikTok Shop is also considered detrimental to small businesses and the community.(Bawole et al., 2017).

Comparison with Instagram Shopping and Facebook Shop

Instagram Shopping and Facebook Shop also provide integrated shopping experiences but operate differently. Instagram Shopping allows users to browse and purchase products directly through shoppable posts and stories, seamlessly integrating commerce with content consumption. Facebook Shop offers a similar experience, allowing businesses to set up a storefront directly on their Facebook page, facilitating browsing and purchasing within the platform.(Tandris, 2018)

TikTok Shop's distinctiveness lies in its direct transaction capability within the app, engaging users through interactive content like live shopping events where sellers can showcase products in real-time. This creates a dynamic and engaging shopping experience, leveraging TikTok's unique short-form video content to drive user engagement and sales. Instagram and Facebook, while interactive, do not provide the same level of direct, real-time interaction between sellers and buyers.(Oktaviani, 2022)

Regulatory Framework

E-commerce regulations in Indonesia continue to develop over time, with several important regulations including:

1. Regulation 80/2019: Implemented on November 25, 2019, this regulation concerns Trading via Electronic Systems.
2. Minister of Trade Regulation No. 31 of 2023: This regulation discusses new rules regarding buying and selling activities in online stores.
3. Separation of Social Media and e-Commerce**: Minister of Trade Regulation 31/2023 revises Minister of Trade Regulation 50 of 2020 concerning Provisions for Advertising, Development, and Supervision of Business Actors in Trading Through Electronic Systems.
4. Positive List: The government is planning a positive list for products permitted to be sold through e-commerce platforms.
5. Local Traders: Local traders are given the freedom to sell imports without being banned, while local traders bring products directly from abroad to sell.
6. Provisions for Advertising, Guidance, and Supervision of Business Actors in Trading Via Electronic System*: This regulation includes provisions for advertising, guidance, and supervision of business actors in trading via electronic systems.(Sukmawati et al., 2022)

Through these regulations, the Indonesian government seeks to regulate and manage e-commerce in an effort to support the growth of the electronics industry and protect consumers.(Anggraini et al., 2023).

Impact on MSMEs and Society

The closure of TikTok Shop in Indonesia has significantly impacted sellers, especially MSMEs. Some of the impacts felt by sellers include:

- a. Decreased Market Access: The closure of TikTok Shop resulted in decreased market access for sellers who were previously active on the platform, missing a significant channel to promote and sell products to TikTok users.
- b. Business Uncertainty: Sellers who are used to direct transactions through TikTok Shop face business uncertainty. This closure could make it difficult for them to find a replacement platform or formulate a new business strategy.
- c. Revenue Cuts: For sellers who rely on TikTok Shop as a primary source of revenue, these closures could result in significant revenue cuts. They need to look for alternatives so that the business remains sustainable.
- d. Inability to Interact Live: Prior to the closure, TikTok Shop allowed sellers to interact directly with buyers through live shopping programs and other features. With these closures, sellers lose the opportunity to communicate directly with potential customers.
- e. Switching to Other Platforms: Some sellers may be forced to switch to other e-commerce platforms to sell their products. This may involve adapting to different rules and procedures on the new platform.
- f. Psychological Impact: TikTok Shop closures can have a psychological impact, especially for sellers who have built success and reputation on the platform. These changes can lead to feelings of disappointment and frustration.
- g. Legal Uncertainty: Sellers may be faced with legal uncertainty regarding e-commerce regulations in Indonesia. Policy and regulatory changes can create uncertainty about future business steps.(Zakaria, 2018)

Overall, the closure of TikTok Shop not only impacts the business model but also affects the psychological and financial aspects of sellers. Business actors need to adapt to these changes and look for alternative solutions to remain competitive in the dynamic e-commerce market. For fashion sellers, the closure of TikTok Shop can affect sales and fashion trends in Indonesia, and they need to look for other platforms to continue to exist and innovate.(Anggraini et al., 2023)

II. The Concept of AI Istihsan and Legal Basis

Istihsan etymologically means to think that something is good or think that something is good. Abu Hanifah still uses the meaning of lughawi as the basis for using istihsan, which means "I consider it good." Istihsan can also be interpreted as the act of following or looking for something better to follow because you were told to do so.(Ardha, 2020)

Imam Al-Bazdawi al-Hanafi defines istihsan as transferring the first qiyas to a stronger qiyas, or istihsan is limiting qiyas with stronger arguments. Imam al-Syatibi explained that istihsan is using juz'i benefits as a substitute for kulli arguments, namely taking specific benefits as the legal basis. Imam al-Kurkhi defines istihsan as the act of abandoning a law that has been established based on sharia arguments by establishing another, stronger law. Hambali scholars also define istihsan as the act of abandoning the law regarding an event that has been determined based on specific propositions from the Koran and Sunnah, by establishing another more important law.(Asnawi, 2020)

By summarizing various definitions from scholars, it can be concluded that istihsan is the act of abandoning the law that has been established by sharia and establishing other laws because there are arguments that are more suitable and stronger according to the soul of the person doing ijihad. This can be done by abandoning qiyas jalli and taking qiyas khafi as a legal basis, or by establishing a law by taking juz'i issues from kulli issues.(Stanulis et al., 2007)

In terms of basic arguments, Abdul Karim Zaidan in his book "Al-Wajiz fi Ushul Fiqh" categorizes istihsan into 5 types:

1. Istihsan Based on a Stronger Text of the Koran or Hadith: Istihsan in this form occurs when there is a contradiction between general law or qiyas and the stronger text (text) of the Koran or Hadith. An example is the issue of buying and selling salam, which is actually prohibited according to sharia, but can be accepted with certain conditions based on special texts that allow it.
2. Istihsan Based on Ijma' (Agreement of the Community): Istihsan can also be based on ijma', especially when the mujtahid's fatwa is not in accordance with applicable general rules or when they are silent about community actions that are actually contrary to the main principles.
3. Istihsan Based on Customs ('Urf): Istihsan can arise based on customs that are commonly applied in society. For example, it allows waqf for movable items such as books and cars, even though general rules state that waqf must be for immovable items.
4. Istihsan in Emergency Conditions: Istihsan that arises due to emergency conditions that encourage the mujtahid to abandon qiyas or general law. An example of this is cleaning a well that is unclean by removing only part of the water, even though according to qiyas, the water cannot be cleaned again.
5. Istihsan Based on Qiyas Khafi: Istihsan can be based on qiyas khafi, where the problem is shifted from clear legal provisions of qiyas to vague provisions of qiyas, but its existence is stronger and more appropriate to practice. An example is about drinking water left by wild birds, where qiyas jalli states it is haram, but istihsan based on the difference between wild animals and wild birds makes it possible to drink the water.(Melania M.I. Wongkar, 2016)

AI Istihsan is a concept of Islamic law which has an important role in dealing with legal situations that are not covered directly by the texts (legal texts). This concept reflects the principles of contextual wisdom and judgment in making legal decisions. In this context, it is

important to understand the legal basis of Al Istihsan as a philosophical and practical basis for the interpretation and application of Islamic law. In reviewing the legal basis, Al Istihsan does not have an explicit textual basis in the Al-Quran or Hadith. Therefore, the role of ulama and legal experts in developing and implementing this concept is very significant. In the history of Islamic law, Al Istihsan is recognized as a valid and relevant method of ijihad (interpretation), especially in dealing with legal problems that cannot be solved directly by the text.(Hidayanti, 2020)

Application of Al Istihsan in Modern Context

In contemporary times, the concept of Al Istihsan can be applied in various contexts:

1. **Technological Advancements:** As technology evolves, new issues arise that were not previously addressed in classical Islamic jurisprudence. Al Istihsan allows scholars to interpret and apply Islamic principles to modern situations, such as the use of digital currency or bioethical issues.
2. **Social and Economic Changes:** Rapid social and economic changes require adaptive legal rulings. Al Istihsan provides a framework for addressing issues like the ethics of business practices in a globalized economy or the management of social welfare programs.
3. **Environmental Concerns:** The concept can be used to address environmental concerns that were not previously considered, such as climate change and sustainable living practices, by aligning contemporary environmental policies with Islamic principles.
4. **Health and Medical Ethics:** Al Istihsan can guide decisions in medical ethics, such as organ transplantation or genetic engineering, where traditional texts may not provide clear guidance.(Mutahhar, 2018)

IV. CONCLUSION

The TikTokShop closure policy needs to be evaluated based on the al-istihsan principle. The government must carefully consider the benefits and benefits that arise, and look for the best solutions that not only overcome short-term problems, but also pay attention to the sustainability of the digital economy and the welfare of business actors. Open and participatory dialogue with various related parties is the key to finding optimal solutions.(Satria, 2021)

This analysis is based on an Islamic jurisprudence perspective and does not cover legal and economic aspects as a whole. A more in-depth study is needed from various perspectives to be able to provide a comprehensive assessment of this policy.(YUWANTI, 2020). The hope this analysis can provide a new perspective on TikTokShop's closure policy.(Rosadi, 2009)

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