

MORAL HAZARD RISK IN THE PRE-VERIFICATION REFUND MECHANISM AND ITS IMPLICATIONS FOR TRADERS' LEGAL CERTAINTY

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Abstract

The development of trade through electronic systems (PMSE) has pushed e-commerce platforms from intermediaries to private regulators that establish transaction mechanisms, including pre-verified refund policies. This has the potential to create an imbalance in the distribution of risk between consumers and traders. This study aims to analyze the suitability of the mechanism with the legal principles in Government Regulation Number 80 of 2019 and its implications for legal certainty and trader protection. This research is a normative legal research with a legislative and conceptual approach. The analysis is supported by limited empirical interview data that is used to strengthen normative arguments. The results of the study show that the pre-verification refund mechanism creates an unbalanced structure due to the absence of an initial control mechanism (ex ante control), thereby creating space for structural moral hazards. In these conditions, consumers are in a position with minimal risk, while traders bear the risk of transactions from the outset without adequate verification. The implication is that legal certainty for traders is only formal, not substantive, because the results of transactions become unpredictable. In addition, most legal protections still rely on repressive approaches and lack effective preventive mechanisms. This study confirms that moral hazard in e-commerce transactions is not solely caused by individual behavior, but is a consequence of the platform's policy design. Therefore, it is necessary to reconstruct the refund mechanism by making verification a prerequisite, strengthening preventive measures, and balancing risk allocation to achieve substantive legal certainty in the PMSE ecosystem.

Keywords: moral hazard, pre-verified refund, legal certainty, merchant protection, PMSE

I. INTRODUCTION

The development of Electronic Trading Systems (PMSE) has transformed the structure of legal relations between consumers, merchants, and digital platforms. The government responded to this development on November 20, 2019, through Government Regulation

Number 80 of 2019 concerning PMSE (PP 80/2019) as a rule in implementing Article 66 of Law Number 7 of 2014 concerning trade.¹

Currently, e-commerce platforms no longer act only as transaction intermediaries but also as private regulators that set internal rules that bind the parties, including mechanisms for returning goods and issuing refunds. This transformation puts the platform in a strategic position to determine the distribution of rights and obligations in electronic transactions. However, the provisions on rights and obligations in self-regulation set by Shopee, in principle, must still refer to the provisions on trade and consumer protection regulated by the Government.²

One policy in development is the Return-Free Guarantee Program, implemented by Shopee on February 16, 2024. This program is designed to increase consumer protection and trust in digital transactions. A number of studies show that flexible refund policies contribute positively to increasing consumer trust and transaction intensity in e-commerce. However, most current research focuses on consumer protection, while the implications of such policies for the position of traders remain underreported. A trader is a person who trades or a person who trades against an item that has been bought and resold.^{3,4,5}

In practice, some platforms implement a *pre-verification refund* mechanism, in which a refund is issued before the merchant verifies the returned item. This mechanism does accelerate the recovery of consumer rights, but at the same time has the potential to shift the distribution of risk disproportionately. Consumers are in a position with a relatively low level of risk, while traders bear the risk of transactions from the initial stage without adequate verification⁶

¹ 'Cabinet Secretariat of the Republic of Indonesia | This is Government Regulation Number 80 of 2019 concerning Trade through Electronic Systems - Cabinet Secretariat of the Republic of Indonesia', n.d. <<https://setkab.go.id/inilah-peraturan-pemerintah-nomor-80-tahun-2019-tentang-perdagangan-melalui-sistem-elektronik/>> [accessed 8 December 2025].

² Enni Soerjati Priowirjanto, Ahmad Fikri Haykal, and Carolina Renee Munaf, 'Marketplace Self Regulation Regarding the Return of Goods Through the Cash On Delivery Payment Method', *ACTA DIURNAL Journal of Notary Law*, 6.1 (2022), p. 115, doi:10.23920/acta.v6i1.1132.

³ 'Does Shopee's Return-Free Guarantee Feature Make MSMEs Profit or Loss? This Is What the Observer Says', n.d. <<https://disway.id/read/766051/fitur-garansi-bebas-pengembalian-shopee-bikin-umkm-untung-atau-rugi-ini-kata-pemerhati/15>> [accessed 8 December 2025].

⁴ Puspita Chairun Nisa and Veni Helen Virgita Hutagalung, 'The Effect of Return Policy Leniency and Seller Reputation on Consumer Trust-Mediated Purchase Decisions', *Journal of Digital Business and Marketing*, 1.2 (2022), p. 70, doi:10.35912/jbpd.v1i2.642.

⁵ Endang Sutrisno and others, *Textbook of Commercial Law*, ed. by Retno Widyani (Deepublish, 2023).

⁶ Eti Rohayati, A. Kumedi Ja'far, and Liky Faizal, 'Return System on the Return Free Guarantee Program in Shopee E-Commerce Perspective of Khyiar Requirements', *Justicia Ciencias: Journal of Legal Sciences*, 10 (2025), pp. 75–76, doi:10.24967/jcs.v10i1.3697.

This condition reflects significant information asymmetry and creates space for *moral hazard*. From the perspective of economic theory, moral hazard arises when a party has the power to act opportunistically because it does not bear the direct consequences of its actions. The design of such a pre-verification refund mechanism has the potential to be a structural factor encouraging claims that do not fully reflect the actual condition of the goods.⁷

The concept of moral hazard has been widely studied in the economic and financial literature. However, the application of the analysis to e-commerce platform policies, especially regarding the refund mechanism and its impact on merchants, remains limited. Previous research has not linked platform policy design to the potential distortion of the legal balance in electronic transactions.

This issue is relevant within the national legal framework, particularly in Government Regulation Number 80 of 2019 concerning PMSE, Article 3, which emphasizes the principles of good faith, prudence, balance, and fairness. The pre-verification refund mechanism may not be fully aligned with the principles of prudence and balance because decisions with financial implications are made without an adequate verification. The sustainability of the digital ecosystem will not be achieved without an innovative and equitable policy framework. Governments need to ensure that digital transformation does not create social gaps or market monopolies held by large corporations.⁸

In contrast to previous research that framed moral hazard as an individual behavior, this study positions it as a structural consequence of the design of digital platform mechanisms. Based on this, the study aims to analyze the pre-verified refund mechanism in the Return-Free Guarantee Program as a potential trigger of moral hazard through information imbalance and risk transfer. In addition, this study also examines its implications for legal certainty and the balance of protection for traders within the framework of PMSE in Indonesia. This brings a novelty in the form of an analysis between moral hazard theory and digital platform policy design from a legal perspective, in order to produce a more balanced understanding of the protection of parties in the e-commerce ecosystem.

II. LITERATURE REVIEW

⁷ 'Moral Hazard in Business According to Dr. Muhsin Hariyanto, M.Ag.', Center for UMY CISIC Studies, 11 October 2025 <<https://pusatstudi.umy.ac.id/cisic/moral-hazard-dalam-bisnis-menurut-dr-muhsin-hariyanto-m-ag/>> [accessed 8 December 2025].

⁸ M. M. Dr. Arnolt Kristian Pakpahan and others, *Digital Business Textbook*, ed. by Sepriano (Sonpedia, 2025).

The Theory of Legal Certainty by Gustav Radbruch

Gustav Radbruch argued that a good law is one that embodies the values of justice, legal certainty, and utility. These three legal objectives are horizontal. Legal certainty is one of the products of the law, or more specifically, it is the product of legislation. Legal certainty requires clear, stable, and predictable rules for the parties. Legal certainty ensures that legal subjects are aware of their rights and obligations and can estimate the legal risks of any action.

In the context of PMSEs, legal certainty is essential to ensure that traders understand the return mechanism, dispute-resolution processes, and potential financial risks that may arise. This kind of procedural uncertainty can create an imbalance in the legal positions of traders and consumers.

Legal Protection Theory by Philipus M. Hadjon

Philipus M. Hadjon stated that legal protection consists of two main forms, namely preventive and repressive.

- a) Preventive Legal Protection, which is a mechanism that provides opportunities for legal subjects to prevent rights violations. In PMSE, regulations such as UUPK and PP 80/2019 are intended to provide preventive protection for both consumers and traders, including return policies and standard clauses.
- b) Repressive Legal Protection, which is dispute resolution when rights violations occur. On e-commerce platforms, a form of repressive protection is realized through *Online Dispute Resolution (ODR)*.

In the context of the Return-Free Guarantee Program, Hadjon's theory is used to assess whether the trader obtains adequate preventive and repressive protection. When the return mechanism is more in favor of consumers and traders have no room to reject or effectively verify goods, legal protection becomes unbalanced and potentially detrimental to traders.

The Theory of Good Faith by Subject

According to Subekti, the principle of good faith in the agreement requires honesty from the parties from the stage of formation to the implementation of the agreement, where each party does not conceal circumstances that could cause losses to the other party in the future. This principle also includes the demand for propriety in the exercise of contractual rights and obligations, so that the agreement is not only formally valid but also substantively just.

In the context of e-commerce, the principle of good faith is used to balance the legal relationship between platform business actors and consumers, especially considering the

character of electronic transactions that are massive, based on standard clauses, and minimal direct interaction between parties.

Previous Research

Research by Fadhilah Yasmin Adzani

This research is a thesis entitled "Legal Protection of Seller Marketplace Against Abuse of Return Guarantees by Buyers: Positive Legal Perspectives and Fiqh of Muamalah (Case Study in the Shopee Seller Community)" written in 2025 at Maulana Malik Ibrahim State Islamic University, Malang, which examines legal protection for marketplace sellers against the abuse of the return guarantee by buyers with empirical methods and qualitative approaches. The results of the study show that there are loopholes in the return system that consumers often exploit to the detriment of sellers, while the existing legal protection is not optimal because it focuses too heavily on consumers. From the perspective of muamalah fiqh, the practice is also contrary to the principle of honesty and the concept of khiyar. This research is relevant to the research to be conducted, but it differs in focus.

Research by M. Isom Fuadi and Miko Aditya Suharto

The research, entitled "Shopee Seller Legal Protection for Automatic Return Losses by Consumers in Shopee COD Transactions," examines the legal protection available to sellers who incur losses due to the automatic return mechanism in Cash on Delivery (COD) transactions on the Shopee platform. The results of the study show that the automatic return system provides convenience for consumers, but in practice, it can cause losses for sellers due to the limitations on sellers' right to refuse returns and their weak bargaining position within the system. In addition, the available legal protection is considered suboptimal because it has not been able to strike a balance between the interests of consumers and sellers. However, this study still focuses on the automatic return mechanism in COD transactions and has not examined the specific forms of abuse of the return guarantee by buyers or analyzed them from a legal perspective.

III. RESEARCH METHODS

Types of Research

This research is a normative juridical legal *research* that focuses on the analysis of written legal norms. Normative research examines the principles, rules, and provisions of laws and regulations governing electronic transactions, consumer protection, and the suitability of

standard clauses in electronic contracts. The research examines the suitability of the mechanism of the Shopee Return-Free Guarantee Program in relation to Government Regulation Number 80 of 2019 concerning PMSE, the Consumer Protection Law, and general principles of treaty law. Interviews are used as supporting materials to strengthen the context of the application of norms in PMSE practice. The interviews in this study are used as tertiary data to confirm and reinforce normative arguments against the application of the refund mechanism in PMSE practice.

Research Approach

This research uses a statute *approach*, a *conceptual approach*, and a *legal document analysis*. The legislative approach is carried out by examining the provisions of the Consumer Protection Law, Government Regulation Number 80 of 2019 concerning PMSE, and the Civil Code, which are relevant to the return policy of goods on e-commerce platforms.

A conceptual approach is used to develop an analytical framework grounded in relevant legal principles and doctrines, including legal certainty, legal protection, contractual balance, good faith, and moral hazard. Meanwhile, the analysis of legal documents is carried out by reviewing the Terms and Conditions of Shopee as an electronic contract to assess its conformity with the applicable positive law

Source of Legal Materials

1. Primary Legal Material:
 - a. Government Regulation Number 80 of 2019 concerning PMSE
 - b. Civil Code (especially Article 1338 on the principle of good faith)
 - c. Shopee Return Free Warranty Program Policy.
2. Secondary Legal Materials:
 - a. Law books on contracts, consumer protection, and commercial law
 - b. Scientific journals and previous research results related to electronic transactions, standard clauses, and *moral hazards*
 - c. Academic literature that discusses the theories of Radbruch, Hadjon and Subekti
3. Tertiary Legal Materials:
 - a. Interview

a. Legal Material Analysis

The analysis of legal materials is conducted in a normative qualitative manner using deductive reasoning, namely by applying general legal norms to the policy practices of the Shopee Return-Free Guarantee Program. The analysis is based on Government Regulation Number 80 of 2019 concerning PMSE, the Consumer Protection Law, and Article 1338 of the Civil Code, and is associated with the principles of legal certainty, good faith, and contractual balance.

IV. RESEARCH RESULTS

Pre-Verified Refund Mechanism in the Return-Free Guarantee Program

Shopee's Return-Free Guarantee program is implemented based on standard clauses that bind merchants as part of electronic contracts as referred to in Article 1 number 4 of Government Regulation Number 80 of 2019 concerning Trade Through Electronic Systems (PP 80/2019). Therefore, the refund mechanism in this program must be in line with PMSE principles, namely good faith, prudence, transparency, accountability, balance, and fairness.

In Indonesian law, there is no rule that expressly gives consumers the right to return goods without reason. Returns are generally only allowed if there are defects or non-conformities in the goods. Therefore, a return without a clear basis can be seen as a form of unilateral cancellation by the consumer, potentially conflicting with the goodwill principle in the agreement.⁹

Based on the results of interviews with academic Y, the refund mechanism on e-commerce platforms is designed as a consumer protection instrument that still maintains a balance between the parties' rights and obligations. In the Shopee seller education center, the platform arranges refunds without merchant verification only under certain conditions, such as for non-returnable goods, claims for unaccepted goods, or certain damages that do not require redelivery. This arrangement essentially reflects the principle of prudence by considering the risk characteristics of each type of transaction.¹⁰¹¹

In practice, the pre-verified refund mechanism in the Return-Free Guarantee Program begins when consumers apply for a refund through the Shopee system by selecting the return

⁹ Yue Guan and Eni Oktaviani, 'The Legal Theory Foundations of the Right to Return Goods Without Reason in E-Commerce', *October*, 1.2 (2020), p. 163.

¹⁰ Y, *an interview with Y academics regarding the e-commerce refund mechanism* (Cirebon, 2026).

¹¹ 'About Returns/Funds | Shopee Indonesia Seller Education Center', n.d. <<https://seller.shopee.co.id/edu/article/23962>> [accessed 22 January 2026].

reason available on the platform. These reasons may include goods not in accordance with the order, sizes not suitable, changes of mind, goods not meeting expectations, or other reasons determined by the system. After the submission is made, the system will process the return request according to the applicable categories and conditions.

Moral Hazard as a Structural Consequence in the Pre-Verification Refund Mechanism

This pre-verified refund design can be analyzed from the perspective of moral hazard. Moral hazard arises when a party has an incentive to act opportunistically because it does not bear the direct consequences of its actions. Previous research has shown that excessive flexibility in the return mechanism on the Shopee platform has encouraged the abuse of rights by consumers, including through the return of goods in a damaged, used, or inappropriate condition of delivery. These findings indicate that the design of the refund policy not only opens up space for opportunistic behavior, but also reflects the lack of effective internalization of the principle of good faith in the system. In this context, the absence of an initial verification mechanism is not merely a technical weakness, but rather shows a design failure in operationalizing the principle of good faith as a standard of conduct in PMSE transactions. Thus, the abuse of rights by consumers cannot be understood as a mere individual deviation, but as a consequence of the configuration of the system that structurally creates the opportunity for moral hazard. ^{12, 13}

The potential moral hazard in the pre-verification refund mechanism can be seen through several main stages. First, consumers can submit a return claim through the system without a strict initial proof requirement. Second, the system can process refunds before the merchant has the opportunity to directly verify the condition of the returned goods. Third, traders lose control over the initial evidence because the goods have not been objectively inspected before the refund decision is made. Fourth, the risk of the transaction is finally transferred to the trader, even though the trader has fulfilled the obligation to deliver the goods under the transaction. The structure of the mechanism reveals a disproportionate risk allocation that creates space for opportunistic actions in electronic transactions.

Before the implementation of the Return Free Guarantee Program, the refund process generally began with the verification stage. Traders have the opportunity to inspect the returned

¹² Nur Hidayat, *Group-Based Sharia Microfinance Model and Moral Hazard Risk* (Jember, 2026) <<https://ummulquro.id/index.php/jii>>.

¹³ Rohayati, Kumedi Ja'far, and Faizal, 'Return System of Goods in the Return Free Warranty Program in Shopee E-Commerce Perspective of Khiyar Requirements'.

goods and ensure that the reason for submission matches the condition of the goods being returned. With this mechanism, the refund decision is made once there is an initial basis for proof of the goods' condition.

However, under certain conditions, refunds can be processed after the implementation of the Return Free Guarantee Program without waiting for direct verification from the merchant. The system emphasizes accelerating the refund process for consumers so that inspecting goods is no longer the primary requirement before refunds are issued.

The change in the mechanism reflects a shift in the return system from a verification approach to a transaction-efficiency approach, and an acceleration in the restoration of consumer rights. Although the goal is to increase consumer convenience and confidence in transactions, changes to the system's design simultaneously affect the distribution of risk between the parties. The mechanism also allows returns to be submitted without adequate initial proof of the goods' condition. Returned goods are often not necessarily in the same condition as when they were first received by consumers. The merchant does not have sufficient opportunity to ascertain whether the goods remain in their original condition, have been used, damaged, or otherwise altered before a refund decision is made.

Based on interviews with trader A, refunds are often processed before the goods are re-received, resulting in the potential for double losses: loss of goods and funds. The informant stated that refunds are often processed before the goods are returned, so the merchant does not have the opportunity to ascertain the goods' condition directly. On the other hand, consumer interviews show that the refund application process is relatively easy and lacks a strict initial verification mechanism.¹⁴¹⁵

These findings are reinforced by the view of academics who show that the design of the pre-verified refund reflects the absence of an *ex ante control* mechanism. The absence of such controls indicates that the system does not have adequate instruments to distinguish between legitimate claims and speculative claims. These conditions form an unbalanced incentive structure. Consumers are in a position with minimal risk because refunds are made without initial verification, while merchants bear the risk from the beginning of the transaction. This inequality creates a situation in which opportunistic actions become economically rational.¹⁶

¹⁴ A, *Interview with Trader A regarding Refund Practices on E-Commerce Platforms* (Cirebon, 2026).

¹⁵ b, *Interviews with Consumers regarding the Ease of Applying for Refunds on E-Commerce Platforms* (Cirebon, 2026).

¹⁶ Y, *interviews with academics Y related to the e-commerce refund mechanism*.

Thus, a non-return guarantee program accompanied by a pre-verified refund mechanism exhibits the characteristics of moral hazard, a situation in which a party has an incentive to act opportunistically because it does not bear the direct consequences of its actions. In this context, consumers have the opportunity to make claims that do not fully reflect the real condition of the goods, while traders do not have adequate opportunities to conduct initial verification.

Furthermore, these findings show that moral hazard in e-commerce transactions is not solely caused by individual consumer behavior but is a consequence of platform design mechanisms that do not internalize control from the outset. In other words, *moral hazard in this context is structural because it arises from the design of a system that opens up opportunities for abuse.*

Information Asymmetry and Risk Distribution Shifts

Information asymmetry in the pre-verification refund mechanism arises because the parties do not have equal access to information about the condition of the goods after the transaction. Consumers can control the goods' physical condition after receipt, whereas traders cannot directly supervise their use or condition before the refund decision is made. On the other hand, the platform controls the refund decision-making system through internal data and algorithms that are not fully accessible to traders. The inequality in access to information puts traders in a more vulnerable position during the proof process.

However, the fast refund mechanism still plays an important role in increasing consumer confidence and transaction efficiency. Therefore, the main problem does not lie in the existence of such a mechanism, but in the lack of a balance between refund speed and an adequate verification system. It can be affirmed that the pre-verification refund mechanism in e-commerce creates. ¹⁷*a moral hazard* condition through an imbalance of transactional burden, information asymmetry, and the absence of an initial control mechanism, which systemically encourages opportunistic behavior in electronic transactions.

On the other hand, a fast refund mechanism is essential in the modern e-commerce ecosystem because electronic transactions carry greater uncertainty than conventional transactions. Consumers cannot inspect goods directly before purchase, so a responsive refund policy is an important instrument in building trust in the digital market. Therefore, the main

¹⁷ Puspita Chairun Nisa and Veni Helen Virgita Hutagalung, 'The Effect of Return Policy Leniency and Seller Reputation on Consumer Trust-Mediated Purchase Decisions', *Journal of Digital Business and Marketing*, 1.2 (2022), p. 64, doi:10.35912/jbpd.v1i2.642.

problem does not lie in the existence of fast refunds themselves, but in the imbalance in the verification and risk-distribution mechanisms in their implementation.

Comparison Table of Refund Mechanisms Before and After Automation

Aspects	Before the Return Free Warranty Program	After the Return Free Warranty Program
Merchant Verification	Done before the refund is processed	Not always done before refund
Proof Control	Traders still have the opportunity to inspect goods	Merchant loses control of the initial proof
Refund Speed	Comparatively slower	Faster
Risk Distribution	More proportionate	Tends to be redirected to traders
Potential Moral Hazard	Comparatively smaller	Tends to be larger
Consumer Protection	Persistent but more limited	Highly prioritized

Overall, the pre-verified refund mechanism shows the following characteristics:

- a. Refund is made before verification by the merchant
- b. Traders lose control over initial proofing
- c. Transaction risk is shifted to the merchant
- d. The claim process is not accompanied by adequate verification

These characteristics indicate a shift from normative design to practices that could cause imbalances in the distribution of transaction risk.

In Government Regulation No. 80 of 2019, especially Article 3 letter a, which emphasizes that PMSE must be held based on the principle of good faith. Good faith performance of the contract refers to objective good faith, where the standard refers to the norms that develop in society. In addition, the principle of good faith, as stated by Subekti, is a subjective element that has not been optimally operationalized, because the system does not provide a mechanism to ensure the honesty of claims.¹⁸¹⁹

This shows that the pre-verification refund mechanism not only impacts the technical aspects of transactions but also disrupts the structure of legal certainty, weakens preventive protections, and opens up systemic moral hazard space in the e-commerce ecosystem. On the other hand, responsive and *evidence-based policies* allow innovation to continue to flourish

¹⁸ Indonesia, Government Regulation of the Republic of Indonesia concerning Trade through Electronic Systems (Number 80 of 2019).

¹⁹ Khairandy Ridwan, *Good Faith in Contracts in Various Legal Systems* (FH UII Press, 2017).

without sacrificing user rights and market stability. Therefore, this principle is key to realizing an inclusive, secure, and sustainable digital business ecosystem.²⁰

Implications of Moral Hazard on Traders' Legal Certainty and Legal Certainty Reconstruction in Shopee's Return-Free Guarantee Program Based on Government Regulation Number 80 of 2019

Moral Hazard Implications on Traders' Legal Certainty

The Return-Free Guarantee program, with a fast refund mechanism, is basically a legitimate consumer protection instrument in the e-commerce ecosystem. This policy serves to increase trust and speed up transactions. However, the design of the combined mechanism essentially creates a structure that encourages the opportunity for.²¹ *moral hazard* on the part of consumers, both individually and structurally. This condition not only has an impact on the economic aspect of transactions but also has direct implications for legal certainty and the effectiveness of legal protection for traders.

From the perspective of legal certainty, Gustav Radbruch's thought emphasized that law must provide clarity of norms and predictability of legal consequences. From the perspective of PMSE, legal certainty is not only related to the existence of written norms but also to the predictability of the results of a transaction mechanism. In this case, the provisions on evidence of electronic transactions in Articles 28 to 30 of PP 80/2019 emphasize the importance of having a basis of proof before a legal decision is taken. However, in this²² *refund* mechanism, the refund decision is made without being based on objectively verified facts. As a result, traders are in a position where they lack a balanced certainty about the final outcome of the transaction, as the refund decision is determined more by the platform's design than by the objective verification process.

This condition shows that the legal certainty that is formed tends to be formalistic, because the mechanism in the platform system does not reflect justice or provide guarantees of fair results. As a result, the relationship among facts, proof, and legal consequences becomes disconnected, thereby undermining the legal space's predictive function in the practice of electronic transactions.

²⁰ Dr. Arnolt Kristian Pakpahan and others, *Digital Business Textbook*.

²¹ Nisa and Hutagalung, 'The Effect of Return Policy Leniency and Seller Reputation on Consumer Trust-Mediated Purchase Decisions', 2022.

²² Muhammad Bintang Firdaus, 'The Dialectic of Justice, Certainty, and Legal Utility in Gustav Radbruch's Perspective on Indonesian Law', *Journal of Legal and Public Policy Studies*, 3 (2025), p. 362.

Weaknesses of Preventive Legal Protection from the Perspective of PMSE

From the perspective of legal protection, Philipus M. Hadjon distinguishes legal protection in two forms, namely preventive (*ex ante*) and repressive (*ex post*). In the pre-verification refund mechanism, protection for traders tends to be repressive, because losses have occurred before there is an opportunity to clarify or defend. The absence of initial verification indicates that the system's preventive protection is not optimal.²³

The main problem in the pre-verification refund mechanism does not lie in the absence of dispute resolution after the loss occurs, but in the lack of optimal preventive legal protection before the loss occurs. Refund systems processed without prior verification indicate that legal protection is more repressive, as new traders have room to defend themselves after losses occur. This condition indicates that there is no adequate preventive mechanism to guard against potential abuse from the outset of the transaction.

These findings are reinforced by interviews with academics who show that the design of the refund mechanism has not provided adequate initial control instruments, so that legal protection does not run preventively. In line with that, law enforcement officials consider that the absence of initial verification also weakens the evidentiary process in dispute resolution. In the perspective of criminal law, especially related to law enforcement in the field of information technology and electronic transactions, proof is highly dependent on the availability of objective data from the beginning of the transaction. The refund mechanism processed before verification can result in the loss of an important stage in the construction of proof, making it difficult for law enforcement to act, even when there are indications of loss. This condition shows that the design of the platform mechanism affects not only the distribution of risks but also the effectiveness of law enforcement within the legal protection system.^{24,25}

Reconstruction of the Refund Mechanism from the Perspective of Government Regulation Number 80 of 2019

Furthermore, regarding the principle of good faith, Subekti emphasized that legal relations must be based on the parties' honesty and propriety.²⁶ The pre-verification refund mechanism has not provided an adequate means to test or verify the honesty of consumer

²³ Ulfah Mutiara Rachmat, Slamet Riyanto, and Arifudin, 'Optimizing Consumer Protection in Complain for Defective Products through Self-Regulation in Online Purchase Transactions of PT. Bukalapak', *Jurisdictie*, 17 March 2024, p. 70.

²⁴ Y, *interviews with academics Y related to the e-commerce refund mechanism*.

²⁵ I, *Interview with Law Enforcement Officials Regarding the Implications of the Refund Mechanism on Evidence in E-Commerce Disputes* (Cirebon, 2026).

²⁶ Subekti, *Hukum Perjanjian* (Jakarta: Intermasa, 2005) p. 41.

claims. This shows that the principle of good faith has not been optimally operationalized in system design.

If associated with the principles in PP 80/2019, this condition reflects the suboptimal implementation of the principles of prudence, balance, and justice in Article 3. Refund decisions made without verification reflect a weak precautionary principle, while a disproportionate distribution of risk shows an imbalance between the parties. Article 3 of GR 80/2019 requires that PMSE be conducted in accordance with the principle of prudence.

The inconsistency between the pre-verification refund mechanism and the principles in Government Regulation Number 80 of 2019 is not only at the normative level but also has a legal impact on the validity and fairness of the parties' contractual relationship. In the construction of treaty law, any exercise of rights must be based on the principles of good faith and balance, as reflected in the PMSE principles. When a platform unilaterally establishes a mechanism that removes the trader's right to verify before a refund is issued, it may create an unbalanced, one-sided clause.

This situation shows that the platform's role is no longer limited to facilitation but has directly affected the outcomes of transactions. This blurs the platform's position as an intermediary and, at the same time, casts it as a decision-maker without adequate accountability mechanisms. In these conditions, the platform in practice not only acts as a provider of electronic means, but also performs quasi-regulatory and quasi-adjudicatory functions because it has the authority to determine the outcome of transactions through its internal system. Problems arise when these authorities are exercised without accountability and transparency mechanisms comparable to formal dispute resolution institutions. Therefore, the pre-verification refund mechanism not only creates an imbalance of risks but also has the potential to be contrary to the principles of contractual fairness and opens up space for further testing of the validity of such clauses from the perspective of consumer protection law and treaty law.

Ideally, the principal is obligated to ensure that any decision that gives rise to legal and financial consequences is based on properly verified information. However, in this mechanism, decisions are taken in conditions of factual uncertainty. This condition indicates an imbalance in the precautionary principle, as the system does not provide a mechanism to minimize the risk of false claims from the outset. As a result, transaction risk is not managed proportionately but is instead unilaterally transferred to the trader.

The implications of these conditions include:

- a. Uncertainty of transaction outcomes for traders

- b. Imbalance of risk distribution between the parties
- c. Weakening of preventive legal protection
- d. Weak evidence base in proving disputes

In that context, a reconstruction of the mechanism becomes necessary, not to remove the quick refund program, but to correct its design so as not to expand the opportunity for moral hazard.

The reconstruction includes:

1. Placement of verification as a prerequisite for refunds that impact the trader's economic rights
2. Strengthening preventive protection by providing clarification space before the refund is executed
3. Operationalization of the principle of good faith in the form of a mechanism capable of detecting opportunistic behavior
4. Affirmation of the limits of the platform's authority as a private regulator so as not to shift legal certainty

Thus, *the moral hazard* arising from the pre-verification refund mechanism not only has an impact on the economic aspect but also has an impact on legal certainty, weakens the legal protection of traders, and reduces the effectiveness of law enforcement in the trading ecosystem through electronic systems. In practice, these steps can be implemented by integrating initial verification, strengthening communication between consumers and traders, and developing a moral hazard pattern-detection system based on user behavior. With this approach, consumer protection can be maintained without causing inequality that is detrimental to business actors, thereby supporting the creation of fair legal certainty and balance in PMSE transactions.

This study has limitations because it uses a normative legal approach with limited interview data, so it has not quantitatively measured the extent of merchant losses and the frequency of moral hazards in e-commerce refund practices. Therefore, the next research is expected to use an empirical approach with broader statistical data to measure the impact of refund policies more comprehensively.

V. CONCLUSION

1. Based on the results of the analysis, the pre-verification refund mechanism in the Return-Free Guarantee Program has the potential to create a structural moral hazard condition due to the absence of an initial verification mechanism as a control instrument. The policy design opens up space for opportunistic actions because the distribution of transaction risks

becomes unbalanced between consumers and traders. From a legal perspective, this mechanism is not fully aligned with the principles of prudence and balance as stipulated in Government Regulation Number 80 of 2019, because decisions with financial implications are taken without a proportionate evaluation process.

2. The moral hazard in the pre-verification refund mechanism has implications for weakening legal certainty and preventive protection for traders in PMSE. The refund mechanism processed without objective verification causes the trader's position to become unbalanced in the process of proving and distributing risk. Therefore, it is necessary to reconstruct the refund mechanism by strengthening initial verification, implementing preventive protections, and limiting the platform's authority to create more proportionate legal certainty.

Suggestions

1. For E-Commerce Platforms. E-commerce platforms need to redesign the refund mechanism by implementing a layered verification system, especially for high-value transactions or categories of goods at risk of misuse. In addition, the platform needs to provide merchants with clarification before refunds are processed and develop a moral-hazard pattern-detection system based on user behavior to minimize the potential for opportunistic claims.
2. For the Government and Regulators. The government needs to strengthen the arrangements for dispute resolution mechanisms and risk allocation in PMSEs, especially the minimum verification standards before refunds are issued. In addition, clearer regulations are needed regarding the platform's authority as a private regulator to avoid creating an imbalance in legal protection between consumers and traders.
3. For Traders. Traders need to improve transaction documentation, starting with the packaging process, shipping, and the condition of the goods before shipping, as proof of protection in the event of a refund dispute. The documentation can serve as an evidentiary tool to strengthen traders' legal position in dispute resolution on e-commerce platforms.

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