



# Legal analysis of the parties partnership agreement in the tiktok affiliate program

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## ARTICLE INFO

### **Article history:**

Received Feb 28, 2023

Revised Mar 20, 2023

Accepted Mar 28, 2023

### **Keywords:**

Legal Analysis  
Partnership  
Program  
Tiktok Affiliates

## ABSTRACT

Human activities have begun to shift by relying on online buying and selling platforms to carry out their activities. One of the well-known platforms is Tiktok. Apart from providing space for sellers and buyers to transact, TikTok also provides an affiliate program for content creators who want to market products from TikTok sellers, and in return is to get a certain commission when the product being promoted is successfully sold. In the process of activities related to affiliation, problems can arise because the legal relationship between the parties is still unclear. Based on this description, the author examines the legality of agreements in the tiktok affiliate program. This study uses a type of normative research. The research approach used is a statutory and conceptual approach. The legal material search technique that the author uses is through library research. The agreement between the service providers, namely TikTok in the affiliate program, is a form of partner / partnership cooperation, and the agreement is carried out by default. The clauses in the terms and conditions of the affiliate program are standard clauses. therefore the terms and conditions of the tiktok affiliate program are compelling. Legal consequences if a violation occurs, namely the non-fulfillment of the conditions in the agreement clause that has been agreed upon by the parties in the tiktok affiliate can be null and void. The limitation of this journal review is that information about the basis for making decisions on the amount of commission received by content creators who are included in the affiliate program is still unclear as to the source and legal basis. There is also no legal umbrella that determines affiliate commissions in the form of legal regulations in Indonesia.

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## 1. INTRODUCTION

The development of the online world is so fast, humans in living their lives cannot be separated from working with the aim of earning income so they can continue to live comfortably. Activities to earn money, in an all-online era, can be done remotely and in an increasingly creative way. Human activities have begun to shift by relying on online buying and selling platforms to carry out their activities. One of the well-known platforms is Tiktok. Apart from providing space for sellers and buyers to transact, TikTok also provides an affiliate program for content creators who want to market products from TikTok sellers, and in return is to get a certain commission when the product being promoted is successfully sold. The Tiktok affiliate program is in great demand because of the ease of getting money, and the program offers are quite attractive. The commission for each product that is promoted also varies (*Analisis Strategi Bisnis E-Commerce*, n.d.-a; Khalamillah, 2019).

Previous research on affiliates is about another e-commerce, namely shopee and the discussion is on the marketing system, not focusing on the legality of the affiliate. Tiktok as another e-commerce also opens an affiliate program, where the system of terms and conditions is different from e-commerce shopee. The similarities between the TikTok and Shopee affiliate programs are that both require creativity from content creators (users who have registered with affiliates) to market products from sellers. The development of affiliates as a place for new jobs to get income attracts researchers to conduct studies, especially the legality. This is because the affiliate system is based on commissions on sales. The terms of this commission are directly from the service provider, in this case, tiktok.

Various developments in digital business offer various conveniences. Transactions that previously could only be done face-to-face with seller and buyer meetings, can now be done online. Developments in online transactions must be followed by legal developments. The law, which from the beginning aims to regulate all activities of human life in order to achieve peace and law, must continue to develop according to the current era. This is so that there is no legal vacuum which results in the blurring of norms in society. Indonesia has always upheld deliberation for consensus as part of the principle of kinship in accordance with each article of the 1945 Constitution. As Indonesian citizens we must behave, think, behave and be responsible above individual interests or more concerned with group interests, this reflects the spirit of kinship that which is the pattern of Indonesian culture

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The Covid-19 pandemic has made all human activities quickly adapt to remote control. This remote control can be done with online media. (Kenotariatan Fakultas Hukum Universitas

Sumatera Utara Jl Sivitas Akademika No et al., 2022; Nurhafni & Bintang, 2018) Every human being during the Covid-19 pandemic is trying to find a new space to be able to fulfill his life needs. Affiliates that are closely related to creator content are one way. This is because there is no need to provide goods to sell, only by marketing other people's products, users of the tiktok application can get a number of commissions, commissions that are obtained by reference to percent, the percentage varies for each product. Regulation of the Financial Services Authority of the Republic of Indonesia Number 42/POJK.04/2020 Concerning Affiliated Transactions and Conflicts of Interest Transactions Article 1 paragraph 1d regulates the definition of Affiliation, namely the relationship between a company and a party, either directly or indirectly, by controlling or being controlled by the company. Article 1313 of the Civil Code mentions the meaning of an agreement, in that article it has the intention that an agreement is an act between two parties who bind themselves to each other. The partnership relationship between sellers, buyers, affiliate content creators, and service providers, namely TikTok, raises legal issues, namely related to agreements between the parties. In this case, it is a form of partnership cooperation agreement that has been agreed upon from the start. (Febriyanti, n.d.; Trisna Negara & Selatan, n.d.-a)

The terms and conditions that already exist and have been compiled from the start by the service, namely tiktok, explain the responsibilities of affiliates, that affiliates cannot contractually bind tiktok. This means that TikTok only gives the option of accepting or rejecting the terms and conditions that have been provided from the start, the clauses of which cannot be negotiated or changed by affiliates. This is referred to as a standard agreement. (Prasetyo & Fazariyawan, n.d.-b; Putri Lestari & DrSt Laksanto Utomo, n.d.-a) In the process of activities related to affiliation, problems can arise because the legal relationship between the parties is still unclear. Based on this description, the author examines the legality of agreements in the tiktok affiliate program.

## 2. RESEARCH METHOD

This research uses a normative research type, the author discusses the legality of agreements in the Tiktok affiliate program with the standard nature of the agreement. The sources for writing this journal are the 1945 Constitution, the Civil Code, Regulations regarding laws and regulations which become the legal umbrella include the 1945 Constitution of the Republic of Indonesia, the Civil Code (KUHPer), Contract Law, Consumer Protection Law, Information and Electronic Transactions Law, Regulations Government Number 71 of 2019 concerning Implementation of Systems and Electronic Transactions and Articles of terms and conditions from tiktok regarding the affiliate program. Normative legal research is also called doctrinal legal research (Syamsudin, 2018).

The research approach used is a statutory and conceptual approach. This approach is based on a hierarchy of principles, based on the study of this journal, the principles are about principles in agreements. The search technique for legal material that the author uses is through library research, which is based on literature such as books, articles, journals and other written works.

## 3. RESULTS AND DISCUSSIONS

Here is no definite definition of e-commerce that has been standardized and mutually agreed upon, but in the general sense accepted by the community, e-commerce is trade carried out via the internet (Romires, n.d.; Trisna Negara & Selatan, n.d.-b).

Tiktok as an affiliate program service provider, provides an easy space for content creators who are also tiktok users to be creative in creating content to market tiktok sellers' products and content creators can get commissions from selling products that consumers buy. This program is attractive to many parties, who want to get additional income. If you want to join the affiliate program, users of the tiktok application must comply with all the terms and conditions made by tiktok.

The provisions for the requirements for becoming a TikTok affiliate have been determined from the start by the service, so that application users who wish to register as affiliates have only two choices, namely accepting or rejecting the points or clauses that have been prepared. Based on this, it means that the tiktok affiliate system uses a standard agreement scheme (Bisnis et al., 2020; Nasution et al., 2020). If viewed from Book III of the Civil Code regarding engagement. The

occurrence of the agreement is from the implementation of the principle of freedom of contract in the agreement, in which an agreement should adhere to the principle of consensualism, namely the process of making agreements on the basis of mutually beneficial agreements to achieve common goals between the parties.

Electronic Contract is an agreement between the parties made through an electronic system. Electronic contracts are made through the media of electronic systems (Putri Lestari & DrSt Laksanto Utomo, n.d.-b). the principle of freedom of contract which is ruled in a contract (Eleanora & Dewi, 2022b). That principle is being fundamental for the existence of standard contract in regulating the legal relationship between business actors and consumer (Sulistyaningrum & Afrilia, n.d.). The Republic of Indonesia has regulated the provisions of the agreement (Hukum et al., 2019).

In article 1313 of the Civil Code (Susanti et al., 2022) an agreement is an act by which one or more people bind themselves to one or more other people (Achjari, 2000; Irawati dan Irawan Budi Prasetyo Jurusan Manajemen et al., 2020). And Article 1320 of the Civil Code, an agreement can be said to be valid if it fulfills 4 conditions (Chai et al., 2007; Yuanitasari, n.d.), namely the agreement of the parties, the ability to make an agreement, a certain matter and a lawful reason. Engagement is a legal relationship that is property in nature between two or more people on the basis that one party has the right and the other party is obliged to an achievement. Based on this, in the tiktok affiliate system, the conditions for affiliate partners are that users must upload a photo of their ID card (resident's identity card), which means that the subject must be a person who is considered legally competent. The partnership also occurs due to legal agreements, to achieve a common goal, namely the content creator/or user of the TikTok application gets a commission from the product that is marketed and successfully purchased by consumers. So that affiliate partnerships aim to gain mutual benefits. The seller gets a profit from the sale, the affiliate gets a commission from marketing services, the consumer gets the convenience of buying goods at the right price and quality, and the tiktok party gets a profit from the many application users who register to join the tiktok application, both joining as sellers, buyers, as well as content creators. Based on this description, it can be concluded that the partnership on TikTok Affiliate is in accordance with the legal principles of a valid agreement by law. Article 48 paragraph (2) of Government Regulation Number 82 of 2012 Concerning the Implementation of Electronic Systems and Transactions states "electronic contracts made with standard clauses must comply with the provisions regarding standard clauses as regulated in laws and regulations (Istiawati, 2021)

One of the requirements for being a TikTok affiliate is that you have to upload a photo of your KTP, which is personal data. Based on Law No. 19 of 2016 amendment to Law No. 11 of 2008 concerning Information and Electronic Transactions (UU ITE) (Syarifita et al., 2022). This regulation contains protection for the use of personal data when carrying out activities on TikTok. Next is Law no. 8 of 1999 concerning consumer protection (UUPK) (Putera Moertanto & Elsina Latumahina, 2023). This regulation explains the rights of consumers when carrying out buying and selling activities. These rights include the right to comfort, safety, security, the right to advocate, and the right to receive legal protection in the event of a dispute.

Law No. 11 of 2008 concerning Information and Electronic Transactions which regulates all matters related to e-commerce (Susanti et al., 2022), such as TikTok transactions. In this case, TikTok is willing to comply with all applicable legal regulations. So that if in the future there are problems that cause disputes, TikTok is willing to accept complaints from application users, and all problems as an initial settlement step are by deliberation with the parties related to the dispute until a consensus is agreed. Then if the deliberation is not successful, the next step is arbitration. So that the dispute resolution offered includes two ways, namely through litigation (court) and non-litigation (outside court).

Standard agreements or standard agreements are agreements that already exist or have been provided in the form of articles which contain points of terms, conditions and clauses that are standard and cannot be changed. The form of this kind of contract is determined by one of the parties that binds the agreement, in the case of the affiliate being a tiktok party. The tiktok party is considered a party with a stronger economy than other parties who are members of affiliate

partners who are considered a weak party, so they are only asked to accept or reject the contents of the form sheet.

In the opinion of Miriam D. Badruzaman (Fadel & Romires, 2022) explaining that the characteristics of a standard agreement are as follows: (a). The contents are determined unilaterally by the creditor whose position is relatively stronger than that of the debtor; (b). The debtor does not participate in determining the contents of the agreement at all; (c) Driven by his needs, the debtor is forced to accept the agreement; (d) Prepared in bulk in advance.

Based on the statement above, the standard agreement includes service providers, namely TikTok, sellers, buyers, and content creators as affiliate partners. Parties who obtain this standard agreement with the choice to accept or reject the entire contents of the agreement are all parties except the tiktok party. Other parties apart from tiktok have no room for negotiation and their position is take it or leave it.

Legal relations in Dutch are known as rechtsverhouding or rechtsbetreking (Chai et al., 2007). Legal relationship is a relationship between two or more subjects regarding the rights and obligations of the parties. According to Soeroso, a legal relationship is a relationship between two or more legal subjects. Based on this theory, all parties involved in this agreement are all bound by a legal relationship.

Legal protection for disadvantaged consumers is that they can submit compensation (Chai et al., 2007; Yudi Astrawan & Luh Made Mahendrawati dan Putu Ayu Sriasih Wesna, n.d.). Legal consequences if a violation occurs, namely the non-fulfillment of the conditions in the agreement clause that has been agreed upon by the parties in the tiktok affiliate can be null and void. The existence of law is very much needed to be respected and legal principles are upheld (Niru & Sinaga, 2019) As a result of not fulfilling the requirements for getting a commission on TikTok affiliate, creator content does not get a commission, and orders placed by buyers are considered illegal. If a user from an affiliate is detected as having committed a violation, then the application user is given the right by TikTok to appeal which space has been provided in the application.

#### **4. CONCLUSION**

Based on the results of the author's study of the legal issues raised, the following conclusions can be drawn. The results of the study carried out by the author, the legal basis for the tiktok affiliate program is a standard agreement, all points from the clauses have been prepared by tiktok, payment of commissions from each sale of goods varies using a percentage. Content creators as parties participating in affiliates cannot add or subtract clauses that have been prepared by TikTok. Clauses with these properties are called standard clauses. The beginning of affiliate collaboration in the tiktok program was with the tik tok creator/user content agreeing to the terms and conditions of the affiliate program.

The agreement between the service providers, namely TikTok in the affiliate program, is a form of partner / partnership cooperation, and the agreement is carried out by default. In implementing the tiktok affiliate program from the results of the study, it is a legal form of agreement, this is because it has fulfilled the legal terms of the agreement according to Article 1320 of the Civil Code. The clauses in the terms and conditions of the affiliate program are standard clauses. The contents of each point have been provided and prepared from the start by the service provider, in this case, TikTok. So there are only two choices, accept or reject. Partners outside of service providers/Tiktok are not allowed to bid on clauses, either adding or subtracting, therefore the terms and conditions of the Tiktok affiliate program are coercive.

Legal consequences if a violation occurs, namely the non-fulfillment of the conditions in the agreement clause that has been agreed upon by the parties in the tiktok affiliate can be null and void. As a result of not fulfilling the requirements for getting a commission on TikTok affiliate, creator content does not get a commission, and orders placed by buyers are considered illegal. If a user from an affiliate is detected as having committed a violation, then the application user is given the right by TikTok to appeal which space has been provided in the application.

The limitation of this journal review is that information about the basis for making decisions on the amount of commission received by content creators who are included in the affiliate program is still unclear as to the source and legal basis. There is also no legal umbrella that determines

affiliate commissions in the form of legal regulations in Indonesia. So that the author's discussion is limited to the study of the legality of tiktok affiliation.

After conducting a study on the legality of agreements in partnership relations with the Tiktok Affiliate program, the author provides a number of suggestions as follows. It is suggested to Tiktok as a service provider, to provide space for application users who wish to join the affiliate program to be able to make offers to either add or reduce clauses on the program's terms and conditions sheet. It is hoped that the tiktok party that makes the standard agreement, adjusts the contents of the standard agreement with the legal terms of the agreement that applies in Indonesia. It is recommended to the public as service users, to be more careful in making digital agreements related to the terms and conditions that have been set from the start by the platform. Don't just because you are tempted by the promised commission, people become less aware of every clause in the terms and conditions that have been set.

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