

LEGAL PROTECTION FOR CONSUMERS IN CONDUCTING ELECTRONIC TRANSACTIONS

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Abstract

Electronic transactions are legal actions carried out using computers, computer networks, and/or other electronic media. Violations of consumer rights, especially in electronic transactions, need to be addressed through statutory regulations. The purpose of this research is for consumers in conducting electronic transactions to know legal remedies that can be taken to find out the form of legal protection for consumers in conducting electronic transactions in Indonesia. The research method is normative law because it examines legal principles, legal systematics, and the level of legal synchronization. Legal remedies that can be taken by consumers when they get goods that are not in accordance with what is offered by the seller, namely through the court and outside the court, as well as legal protection for consumers in conducting electronic transactions are contained in Law Number 8 of 1999 concerning Consumer Protection and in Law Number 11 of 2008 concerning Information and Electronic Transactions.

Keywords: *Electronic Transactions, Legal Protection and Consumer Protection*

1. INTRODUCTION

The existence of progress in the field of the internet is indicated by the existence of an electronic transaction system. Electronic transactions are legal actions carried out using computers, computer networks, and/or other electronic media. The existence of electronic transactions allows the public to carry out buying and selling transactions more efficiently where the parties do not need to meet face to face, (Syaibatul Hamidi, 2013). displayed by sellers on the internet. Because today many consumers experience losses due to electronic transactions such as the incompatibility of goods that reach consumers' hands with photos of these items on the internet. Violations of consumer rights, especially in electronic transactions, need to be addressed through laws and regulations in order to increase consumer dignity and increase consumer awareness, concern, ability, knowledge, and independence to protect their rights, as well as foster the attitude of responsible business actors. , (Gunawan Widjaja and Ahmad Yani, 2017). The high number of internet users triggers business actors to place their products in web-based on/trie services or what is later known as electronic commerce. The foresight of business actors to utilize the internet as a means of doing business, such as: online marketing, distance selling, and e-commerce. The rapid development of e-commerce around the world has an impact on a country, both micro and even macro, which greatly influences economic growth in a country, especially for the State of Indonesia.

Despite the fact that the growth of trade in the e-commerce model is influenced by the large use of the internet by developed countries in the world in conducting trade transactions through e-commerce, (Sukarmi, 2017). Consumers in conducting e-commerce transactions are very vulnerable, it can harm them, namely goods or services that have been ordered and paid according to the price set by the merchant, but the goods or services are not sent / not obtained by the consumer as a buyer. the growth of trade in the e-commerce model is influenced by the large use of the internet by developed countries in the world in conducting trade transactions through e-commerce, (Sukarmi, 2017). Consumers in conducting e-commerce transactions are very

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Indonesian people themselves usually carry out e-commerce transactions through online stores and marketplaces. Marketplaces and online stores have differences in that Marketplace is a place on the internet where many parties gather to process buying and selling transactions, there are those who want to find an item and there are other parties who want to sell goods. Conventionally, the marketplace concept can be analogous to a traditional market where many people gather at the place to make buying and selling transactions. The marketplace provider acts as a facilitator that facilitates meetings and legal transactions between sellers and buyers. Examples of online marketplaces in Indonesia are Tokopedia, Bukalapak and Shopee. While online stores can be analogous to retail stores that are operated virtually. According to data submitted by the Director of Informatics Empowerment, Directorate General of Informatics Applications of the Ministry of Communication and Informatics, Septriana Tangkary stated that the growth in the value of electronic commerce (e-commerce) in Indonesia reached 78 percent, the first highest in the world. Indonesian people themselves warmly welcome the emergence of many online shops and online marketplaces because they consider e-commerce as an answer to a practical and easy buying and selling transaction, (Onno W. Purbo and Aang Arif Wahyudi, 2016).

Where we just have to look at the goods and their specifications, then we just have to choose a payment system. Do we want to pay via account transfer, through a retail store or when the goods arrive, all options have been provided. But behind the convenience that consumers get in making payments through the on-site payment system, there are problems, namely the goods received are sometimes damaged, do not match specifications and some are even empty. This problem is clearly detrimental to consumers and raises big questions in the wider community regarding security in conducting e-commerce transactions. Various kinds of electronic transactions carried out in e-commerce trade certainly raise new problems in the legal world, especially regarding legal protection for consumers. At present the Consumer Protection Law in force in Indonesia is still based on physicality only and does not cover virtual/virtual trading and transactions. The issue of consumer protection in e-commerce is an important aspect to pay attention to, because some of the distinctive characteristics of e-commerce will place parties consumers to a weak or disadvantaged position, such as:

Table 1.1 Consumer Protection Issues

No	Consumer Protection Issues
1	Stores and companies (the internet merchants) that are listed on the internet do not have a physical address in a particular country, this makes it difficult for consumers to return goods because the goods are not finished, the goods ordered are damaged when they arrive in the hands of consumers and other reasons that are detrimental to consumers.
2	Consumers find it difficult to obtain guarantees to obtain compensation.
3	Products purchased by consumers may not be in accordance or compatible with the initial agreement at the time of the transaction.

Source: Iblam School Of Law

In transactions via the internet, various frauds and frauds often occur involving business actors and consumers. Frauds committed by business actors, for example, business actors are

fictitious shops, goods sold do not match the description written on the sales page and other matters in the form of fraud that harm consumers.

According to the general elucidation of Law Number 8 of 1999 concerning Consumer Protection (UUPK), the main factor that makes consumers weak is the low level of consumer awareness of their rights. This is due to the low level of consumer education. The rights referred to, for example, are that consumers do not get an explanation about the benefits of the goods or services consumed. More than that, it turns out that consumers do not have a balanced bargaining position with the business actors. The trading activities of the e-commerce model of producers or merchants are more likely to choose a standard agreement model whose substance is determined unilaterally, so that the use of the agreement narrows the bargaining space for consumers. In fact, according to the provisions of Law Number 8 of 1999 Concerning Consumer Protection, mentions the prohibition for business actors to include standard, unconditional clauses in an agreement document. In this case it can lead to various new problems that arise in relation to the violation of consumer rights. The standard agreement is coercion by business actors on consumers, because there is no bargaining balance in dealing with business actors. So that the standard agreement model demands that consumers be more careful in determining the choice of goods marketed online. In a number of cases, a standard agreement does not fulfill one of the requirements for the validity of an agreement as stated in Article 1338 of the Civil Code (Burgerlijk Wetboek), namely as follows: "All agreements that are legally made apply as laws to those who make them. An agreement cannot be withdrawn other than by the agreement of both parties, or for reasons stated by law to be sufficient for that purpose. An agreement must be implemented in good faith.

According to the provisions of Article 1338 of the Civil Code that the agreement made by the parties lies in the agreement is one of the elements that must be fulfilled by the parties and carried out in good faith. Even though the Consumer Protection Act has regulated consumer rights and prohibited actions for producers, can this UUPK be applied to e-commerce transactions? With the existence of problems in e-commerce, consumer rights are often ignored by business actors, namely by the existence of inappropriate products consumed by consumers and not in accordance with what is being promoted, so that consumer rights are often ignored by them. Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE), and Law Number 19 of 2016 concerning Information and Electronic Transactions as a form of responding to the development of cyberspace used by producers (merchants) and consumers in trade transactions which often cause losses between the two parties. The ITE Law has provided two important things in e-commerce trade, namely; First, recognition of electronic transactions and electronic documents within the legal framework of engagement and evidentiary law, so that legal certainty of electronic transactions can be guaranteed. Second, the classification of actions that qualify as legal violations related to the misuse of IT (Information Technology) is accompanied by criminal sanctions.

The weak position of consumers is often exploited by business actors to obtain the maximum profit from consumers. The factor of consumer ignorance, unclear information on goods/services provided by business actors, consumers' lack of understanding of the transaction mechanism is a factor causing consumers' weak position. Therefore, in order to create a healthy business climate for consumers in conducting trade transactions through e-commerce, it is necessary to seek a new and adequate form of legal regulation that is able to regulate all their activities (Elisatris Gultom, 2017). When a consumer consumes or uses a product or service, then every consumer wants satisfaction with the product, at a minimum,

2. IMPLEMENTATION METHOD

The research method is normative law because it examines legal principles, legal systematics, and the level of legal synchronization. Data sources refer to primary legal materials and secondary legal materials which are processed descriptively, analytically, and argumentatively by approaching legislation and through searching related literature. Research with a normative juridical approach is research that prioritizes library data using secondary data. The secondary data

can be in the form of primary legal materials, secondary legal materials and tertiary legal materials, (Ronny Hanitijo, 2016). The data collection method in this study was carried out by means of library research or also known as document study which includes primary, secondary and tertiary legal materials. (Shawn Anshari, 2015). Data processing uses authentic interpretation, namely by describing, systematizing and evaluating the regulations governing consumer protection.

3. RESULTS AND DISCUSSION

3.1 Legal Protection for Consumers in the 1945 Constitution

Legal protection for consumers is based on the 1945 Constitution which is stated in the fourth paragraph which reads as follows: "Then from that to form an Indonesian State Government that protects the entire Indonesian Nation". The other legal basis is contained in the provisions in Article 27 paragraph (2) of the 1945 Constitution, which are as follows: "Every citizen has the right to a decent living for humanity". The legal basis of the 1945 Constitution mentioned above is the legal basis for all Indonesian citizens to obtain their rights to a decent living and protection by the government. If someone has been disturbed or disturbed by another party, then state instruments will respond and intervene whether requested or not, to protect and prevent the disturbance/or problem. Getting a decent life is a right for all citizens and is the right of everyone. So consumers who are Indonesian citizens are harmed in the transaction. trade and are harmed by consuming goods and / or services, need to get legal protection by the government as the administrator of the State.

- a. To protect the interests of consumers and producers;
- b. Avoid the development of fraudulent/or unfair business practices (unfair trade practices);
- c. Creating openness/or transparency;
- d. Creating a business climate capable of promoting healthy economic growth; Therefore, the government as the organizer of the state has the obligation and authority to guarantee the protection of its citizens, in this case producers and consumers in carrying out trade transactions electronically, so as to create balance, harmony and harmony for the parties, both producers (merchants) and consumer.

3.2 Legal Protection for Consumers in Law Number 8 of 1999 concerning Consumer Protection and Law Number 11 of 2008 concerning Information and Electronic Transactions

The Consumer Protection Act defines that consumer protection law is as a whole the principles and rules of law that regulate and protect consumers in their relationships and various problems with providers of goods and/or services (producers). The legal relationship between producers of goods and/or services and consumers gives birth to rights and obligations that underlie responsibility. In principle, business actors can be held accountable if something arises. consumer losses as a result of defaults on business actors in e-commerce transactions, for example business actors/merchants do not fulfill agreements at all, carry out achievements but are late in fulfilling agreements, mistakes in fulfilling achievements,

This is in line with the policy in "A Framework For Global Electronic Commerce" in America which states that for provisions or matters that require the role of the government, the role of the government must be aimed at encouraging and enforcing the provisions of applicable laws and regulations such as the Act. Number 8 of 1999 concerning Consumer Protection (UUPK) in Indonesia, or similar to the model law form in UNOTRAL which can be used to understand legal issues surrounding e-commerce transactions. The framework that underlies a principle of business actor responsibility gets more special attention in this study due to the weak position of consumers towards producers in buying and selling transactions through e-commerce. or like the model law form in UNOTRAL which can be used to understand legal issues surrounding e-commerce transactions. The framework that underlies a principle of business actor responsibility gets more

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Buying and selling transactions through e-commerce is an agreement that occurs between the parties which is a manifestation of the provisions contained in Article 1233 in conjunction with Article 1234 of the Civil Code, are as follows: Article 1233 of the Civil Code, is as follows: "Each agreement is born good because of the agreement , both because of the law." Article 1234 of the Civil Code, is as follows: "Each engagement is to give something, to do something, or not to do something." Engagement in an e-commerce transaction creates a promise that must be carried out by business actors regarding problems faced by consumers in buying and selling transactions using the internet, including the responsibility of business actors for information. Information is one of the most important commodities for consumers in conducting trading transactions because consumers often become victims as a result of not being critical and not questioning the existence of any information regarding the goods and/or services they consume. Information on a product helps producers determine product standards to be offered to consumers in an advertisement on the internet (webvertising), as the caveat vendor principle plays an urgent role because producers must be careful of the products offered and/or sold which may harm consumers. then business actors are required to have good faith by not manipulating data on a product.

Legal provisions governing forms of violations by previous advertising business actors are not explicitly regulated in the Civil Code, but Article 1473 of the Civil Code states that, "The seller is obliged to state clearly what he is binding himself for, all promises that are not clear and can be made various meanings, must be construed to its detriment." Therefore business actors must provide information objectively, explicitly and clearly by advertising business actors. As the provisions in Law Number 11 of 2008 concerning Information Technology and Electronics (UU ITE) state that the parties to a transaction must be in good faith, as Article 17 of the ITE Law states,

As for the prohibitions against business actors in representing goods and/or services listed in Article 9 in conjunction with Article 17 paragraph (1) UUPK. The substance of Article 9 UUPK mentioned above is a representation in which business actors are required to provide true information/explanations on the goods/or services being promoted and traded. This is important, because we know that one of the causes of consumer losses is misrepresentation of certain goods and/or services they want to consume. In general, the losses suffered by consumers in the beginning of buying and selling e-commerce are consumers being tempted by advertisements or brochures and guarantees or warranties on goods and/or services that are not true. Information is a promise stated in the offer, promotion, and the advertising of said goods and/or services becomes the evidence considered by the judge in the lawsuit based on the business actor's default. Responsibility is borne by business actors, whether producing/promoting/advertising goods and/or services on the internet or advertising business actors, in representing a product incorrectly, either by reason of default or by reason of unlawful acts, is a means that can provide consumer protection because with this accountability the producer is more careful in representing a product and / or service, so that consumers can obtain correct information about a product and / or service offered by the producer in webvertising at an online store.

3.3 Legal Remedies for Consumers in Electronic Transaction Agreements

a. Settlement of Consumer Disputes in Litigation

Consumer disputes here are limited to civil cases. Settlement of consumer disputes by "litigation" is a settlement of disputes through the courts, as stipulated in Article 45 paragraph (1) in conjunction with Article 48 UUPK, which states as follows: Article 45 paragraph (1) UUPK Every consumer who is harmed can sue business actors through

institutions which is tasked with resolving disputes between consumers and business actors or through courts that are within the general court environment. Article 48 UUPK The settlement of consumer disputes through the courts refers to the provisions regarding general courts that apply by taking into account the provisions in Article 45.

And confirmed in Article 38 paragraph (1) in conjunction with Article 29 (1) UUIE, states the following: Article 38 paragraph (1) UUIE Everyone can file a lawsuit against the party that organizes Electronic Systems and / or uses Information Technology that causes losses. Article 29 paragraph (1) UUIE Civil lawsuits are carried out in accordance with the provisions of the Laws and Regulations. In civil cases at the District Court, the consumer is given the right to file a lawsuit for violations by business actors as emphasized in Article 46 paragraph (1) of the UUPK, as follows:

- 1) A consumer who is harmed or the heir concerned;
- 2) A group of consumers who have the same interests;
- 3) Non-governmental consumer protection institutions that meet the requirements, namely in the form of legal entities or foundations, which in their articles of association clearly state that the purpose of establishing such an organization is for the benefit of consumer protection and has carried out activities in accordance with its articles of association;
- 4) The government and/or related agencies if the goods and/or services consumed or utilized result in large material losses and/or a large number of victims.

In consumer protection law, in general the proceedings in resolving consumer disputes and business actors recognize that there are 3 (three) types of lawsuits, namely:

- 1) Small Claim tribunal, a type of lawsuit that can be filed by consumers, even though economically the value of the lawsuit is very small.
- 2) Class Action, is a consumer lawsuit where the victim is more than one person or a lawsuit made by a group of people.
- 3) Legal Standing, is a lawsuit filed by a group of consumers by appointing a Non-Governmental Organization (NGO) whose activities concentrate on consumer activities to represent the interests of consumers or known as the NGO Claim Right.

Dispute resolution through court (litigation) is possible if the parties have not determined the consumer dispute resolution has not attempted to resolve disputes outside the court (non-litigation). Settlement of disputes using procedural law, civil, criminal or state administration, has brought advantages and disadvantages to consumers in the litigation process, however, the costs borne by the plaintiff are not insignificant in terms of consumer he will bring difficulties and obstacles to consumer if the case in the realm of public court. Besides that, the settlement of disputes in the business world is expected as far as possible not to damage business relations. Furthermore, the desired dispute resolution is to take place quickly and cheaply.

- 1) Settlement of disputes through litigation is very slow;
- 2) Case costs are relatively expensive;
- 3) Courts are generally unresponsive;
- 4) Court rulings do not solve problems;
- 5) Generalist ability of judges; Based on the various deficiencies of litigation dispute resolution, so that in the business world the parties to the dispute prefer to resolve disputes in a non-litigation manner which is very much needed in the business world because the process is relatively fast and low cost.

b. Non-Litigation Consumer Dispute Resolution

The non-litigation route is a mechanism for resolving disputes outside the court by using mechanisms that live in society, such as deliberation, peace, kinship and so on. At present the way that is now developing and in demand by business people is through the ADR (Alternative Dispute Resolution) institution.

As for the forms of "non-litigation" consumer dispute resolution, in Article 52 letter (a) are arbitration, conciliation, and mediation, as follows:

- 1) Arbitration, according to Article 1 of Law no. 30 of 1999, arbitration is a way of settling a civil dispute outside the general court which is based on an arbitration agreement made in writing by the parties to the dispute.
- 2) Conciliation; (Consensus), is a form of dispute resolution with the intervention of a third party (conciliator), where the conciliator is more active, by taking the initiative to compile and formulate settlement steps, which are then proposed and offered to make to the disputing parties.
- 3) Mediation (mediation) is a process of negotiating problem solving in which an impartial third party (mediator) works with disputing parties to help obtain a satisfactory agreement, whose position is only as an advisor, not authorized to give members! decision to resolve the dispute.

The Consumer Dispute Settlement Agency (BPSK) functions to handle and resolve disputes outside the courts. Therefore BPSK has the authority, as follows:

- 1) Summon business actors who are suspected of having violated consumer protection;
- 2) Calling and presenting witnesses, expert witnesses, and/or everyone who is suspected of knowing violations of Law No. 8 of 1999 concerning Consumer Protection (UUPK);
- 3) Request assistance from investigators to present business actors, witnesses, expert witnesses, or anyone who is not willing to fulfill BPSK's summons;
- 4) Decide and determine whether there is a loss on the part of the consumer; Imposing administrative sanctions on business actors who violate the provisions of UUPK article 52;

The implementation of UUPK and UITE provisions must be harmonized because they often bring specific issues related to consumer protection in trade transactions via the internet. Therefore UUPK provisions relevant to electronic transactions must be applied to efforts to protect the rights of consumers who carry out trade transactions electronically.

4. CONCLUSION

Based on the results of the research and discussion of the problems raised in this study, it can be concluded that legal protection for consumers who are disadvantaged in electronic transactions is divided into two forms of arrangement, namely:

- a. Legal protection through general forms of legislation for everyone who makes transactions based on Law Number 8 of 1999 concerning consumer protection and Law Number 11 of 2008 concerning information and electronic transactions.
- b. Legal protection based on agreements specifically made by producers and consumers in e-commerce trade.
- c. For the parties (business and consumer behavior) in electronic transactions must have good faith to carry out their rights and obligations, so that no losses occur in the future to one of the parties, both consumers and business actors. Consumers want to carefully and thoroughly read the forms offered in web stores and businesses should. Consumers want to carefully and thoroughly read the forms offered in the web store and business actors should provide detailed, transparent and clear information on the web store on the internet on the products offered in the web store and business actors should provide information on the web store on the internet with details, transparent and clear on the products offered by consumers both goods and / or services.

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