

LEGAL PROBLEMS IN ONLINE BUYING AND SELLING (*E-COMMERCE*) REVIEWED FROM LAWS AND REGULATIONS

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Abstract

This study aims to analyze legal problems in online buying and selling (e-commerce) in terms of laws and regulations. The research method used is normative juridical. The results showed that the application of online buying and selling in practice raises several legal problems, including the following: 1) Consumers cannot immediately identify, see, or touch the goods to be ordered; 2) Unclear information regarding the products offered and/or there is no certainty whether consumers have obtained various information that is worthy of being known, or that is necessary to make decisions in a transaction; 3) Unclear status of the legal subject of business actors; 4) There is no guarantee of transaction security and privacy and an explanation of the risks associated with the system used; 5) The imposition of unbalanced risk, because generally for buying and selling on the internet, payments have been made in full first by consumers, while the goods are not necessarily received or will follow later, because the existing guarantee is a guarantee of delivery of goods not receipt of goods; 6) it is difficult to know clearly when an agreement between the two parties will occur; 7) There is no guarantee institution for the validity of the online shop; 8) Transaction security issues related to legal certainty guarantees

Keywords: Problem, Online, Selling, E-Commerce, Legal

A. INTRODUCTION

Online is a process of buying and selling goods and services carried out through a computer network, namely the internet. Online buying and selling can streamline and streamline time so that someone can make buying and selling transactions through the internet is carried out without any face-to-face between the parties, they base the transaction of the sale and purchase on a sense of trust in each other, so that the sale and purchase agreement that occurs between the parties is carried out electronically. The parties to the online sale and purchase agreement are sellers, buyers, *acquirers* (billing intermediaries and payment intermediaries), issuers (credit card companies that provide cards), and *Certification Authorities* (neutral third parties who hold the right to issue certificates to sellers, to issuers and in some cases also to *card holders*).¹

The Internet brings positive access to manufacturers, intermediaries and customers. Producers can reach more consumers, determine target markets more effectively and serve consumers better and satisfactorily. In online transactions, all formalities that can be used in conventional transactions are

reduced, in addition to of course consumers have the ability to collect and compare information such as goods and services more freely without being limited by ²*borderless* boundaries. An entrepreneur, merchant (*vendor*) or corporation can display or post advertisements or information about their products through a website or site, either through its own website or through other commercial website service providers. If interested, consumers can contact through the website or guestbook available on the site and process it through the website by pressing the "*accept*", "*agree*" or "*order*" buttons. Payment can also be immediately submitted through writing a credit card number on the site. However, in addition to some of the benefits offered as mentioned above, online transactions also present several problems both psychological, legal and economic. ³

Psychological problems, for example, most prospective buyers from an online store feel uncomfortable and safe when they first make an online purchase decision. There is doubt as to the veracity of the data, information or message because the parties never met in person. Therefore, the issue of ⁴*trust* and *good faith* is very important in maintaining the continuity of transactions. The object of a covenant is essentially in the form of achievements in the form of giving something, doing something, or not doing something. Achievements in the form of objects must be handed over to the other party. The handover can be in the form of surrender of property rights or enjoyment only, while achievements in the form of labor or expertise must be carried out by parties who "sell" labor or expertise. The party entitled to the achievement is called the creditor, while the party who is obliged to fulfill the achievement is the debtor.

In an agreement, sometimes the debtor defaults, that is, it does not succeed in fulfilling the achievements as promised. Regarding this default, Prof. Subekti classifies into four types, namely: not achieving at all, achieving but not being late or not on time, achieving imperfectly, and doing something that is prohibited in the agreement. The ends of the can also be the termination of the contract. This default is compensation in the form of costs, losses or interest, or the development of online buying and selling is regulated in Law No. 11 of 2008 concerning Electronic Information and Transactions abbreviated as ITE Law. As a consumer, you must be observant in buying an item.

In an online buying and selling transaction, there is an agreement between business actors and consumers. Law Number 11 of 2008 concerning Electronic Information and Transactions, Article 19 of the ITE Law states that parties to electronic transactions must use an agreed electronic system. So before making an electronic transaction, the parties agree on an electronic system that will be used to make transactions, unless otherwise specified by the parties, an electronic transaction occurs at the time when the transaction offer sent by the sender has been received and approved by the recipient as specified in Article 20 paragraph (1) of the ITE Law. Thus, in this case an electronic transaction only occurs if an offer is sent to the recipient and there is an agreement to accept the offer after the offer is received electronically. Article 20 paragraph (2) of the ITE Law states "Approval of electronic transaction offers must be carried out with an electronic statement of acceptance" The next stage after the achievement of the consent of the parties is to make a payment. Payment can be made with 6 *cash* systems, transfers via ATMs, credit cards, or third-party intermediaries such as *rekber* (joint account).

Buying and selling is one type of agreement regulated in the Civil Code, while online is basically a modern buying and selling transaction model that implies technological innovations such as the internet as a transaction medium. The implementation of buying and selling online in practice causes several problems, for example buyers who should be responsible for paying a certain amount of the price of the products or services they buy, but do not make payments. For parties who do not carry out their responsibilities in accordance with the agreed agreement, they can be sued by the aggrieved party for compensation. Article 1320 of the Civil Code stipulates that the agreement must meet the

conditions for the validity of the agreement, namely the agreement of those who bind themselves, the ability to make an agreement, a certain thing and a lawful cause.⁵

If the four conditions of validity of the agreement are fulfilled, then the agreement is valid and binding on the parties. In this case, it is clear that the Civil Code is a legal regulation of non-electronic engagement, so this principle gives freedom to the parties who agree to form an agreement and determine for themselves the form and content of an agreement. Given that agreements made through the internet media are standard agreements or standard agreements, they must also meet the requirements specified in Article 18 of Law Number 8 of 1999 concerning Consumer Protection, which is related to the provisions for the inclusion of standard clauses in a standard agreement. The standard agreement is always prepared by the creditor unilaterally, which usually contains conditions that limit the creditor's obligations. The condition is known as the eulatory clause, which has the juridical consequence that the debtor has only two alternatives, namely accepting it or rejecting it.

B. DISCUSSION

1. Legal Review of Contracts in Online Buying and Selling

Business activities with internet technology are referred to as *electronic commerce (E-commerce)* and currently in Indonesian sense have been known as "Electronic Business".⁶ *E-commerce* is an agreement through an online contract that is in principle the same as an agreement in general. The difference lies only in the media in making the agreement. Although in certain types of online contracts, the object of engagement can only be realized in electronic media, because the object of engagement is in the form of digital content, such as services to access the internet. This type of agreement more often uses the EDI (*Electronic Data Interchange*) facility, which is an electronic data exchange mechanism that is generally in the form of routine business information between several computers in a computer network that can manage it. The data is formed using standard rules so that it can be implemented directly by the receiving *computer*.

Jual buy online (*E-commerce*) is a commercial transaction carried out between the seller and the buyer or with other parties in the same agreement relationship to deliver a certain amount of goods, services, and transfer of rights⁶. In buying and selling transactions via the internet, the parties involved in it carry out legal relations that are established through a form of agreement or contract carried out electronically.⁷

The definition of an electronic contract is explained in Article 1 number 17 of the ITE Law which reads as follows: "An electronic contract is an agreement of the parties made through an electronic system." While the definition of an electronic system is a series of electronic devices and procedures that function to prepare, collect, process, analyze, store, display, announce, transmit, and or disseminate Electronic Information.

Some elements of *Ecommerce*, including the following:

- a. There is a trade contract
- b. The contract was executed with electronic media
- c. Physical presence of the party is not required
- d. The contract took place in a public network
- e. The system is open, that is, with the internet or WWW
- f. The contract was independent of the boundaries of national jurisdiction

E-commerce transactions include many things, so to distinguish them need to be divided into types of E-commerce. The types of Ecommerce of an E-commerce activity are as follows:⁸

a. *Business to Business (B2B)*

Transactions that occur between companies in this case, both buyers and sellers are a company and not individuals usually these transactions are carried out because they have often known each other and the buying and selling transactions are carried out to establish cooperation between the companies.

b. *Business to Consumer (B2C)*

Transactions between companies and consumers or individuals. In this type of transaction is propagated in general, and consumers take the initiative to make transactions. Producers must be prepared to receive a response from these consumers. Usually the system used is a web system because this system is commonly used among the public.

c. *Consumer to Consumer (C2C)*

Buying and selling transactions that occur between individuals and individuals who will sell each other's goods.

d. *Consumer to Business (C2B)*

Transactions that allow individuals to sell goods to the company.

e. *Non-Business E-Commerce*

Transactions that are non-business activities such as the activities of educational institutions, non-profit organizations, religious and others.

f. *Intrabusiness Electronic Commerce (Organization)*

This activity includes all internal activities of the organization through the Internet to exchange goods, services, information and sell the company's products to employees.

g. *Governer to Citizens (G2C)*

Government services to its citizens through E-commerce technology, besides that it can be used for cooperation between the government and other governments or with companies.

h. *Mobile Trading*

Allows wireless use of the internet, such as accessing the internet through a mobile phone.

Basically, the conditions for the validity of the sale and purchase agreement are already stated in Article 1320 of the Civil Code, this can also be a reference to the conditions for the validity of a sale and purchase agreement through *E-commerce / online*. Because *E-commerce* is also a buying and selling activity whose difference is carried out through online media. It's just that in buying and selling hammering ecommerce is done through internet media that can speed up, simplify and buy and sell transactions are not available.

The ITE Law also adds several other requirements, including the following:

- a. The use of Information Technology and Electronic Transactions is carried out based on the principles of legal certainty, benefits, prudence, good faith, and freedom of choice of technology or technology neutral.
- b. Business actors who offer products through the Electronic System must provide complete and correct information related to the terms of the contract / agreement, manufacturer, and product offered.
- c. The parties to the Electronic Transaction as referred to are required to assume good faith in interacting and or exchanging Electronic Information and or Electronic Documents during the transaction. Provisions regarding the timing of sending and receiving information and or electronic transactions.
- d. Using a reliable and secure and responsible electronic system.
- e. Unless otherwise specified by the parties, an Electronic Transaction occurs on a transaction to which the sender has received and approved the recipient. f. Approval of the Electronic Transaction offer as referred to shall be made by an electronic declaration of acceptance.

The existence of *E-commerce* serves as a transaction medium for sellers and buyers who trade. As a transaction medium, E-commerce provides various convenience facilities that can be felt by users after going through several stages, namely:⁹

a. *Information sharing*

It is the earliest process in E-commerce transactions. At this stage, potential buyers usually browse the internet to get information about a particular product to be purchased. Information about a particular product can be obtained directly either through the website of the merchant or the company that produces the goods.

b. *Online order*

Is the stage of ordering from potential buyers who are interested in the products (goods and services) offered. Therefore, to meet these needs, companies need to have a data center (corporate database) that provides adequate information both related to the various products offered, as well as the procedures for purchasing them. For ordering through the website, merchants usually provide a catalog containing a list of goods (product table) to be marketed.

c. *Online transactions*

That is a trading process that is carried out online. To make online transactions, many ways can be done. For example, through the internet media someone can make online transactions by chatting or through video conference audio-visually. While other transactions such as using e-mail, can also be done easily.

d. *Electronic payments*

Is a payment system that is carried out electronically. Usually, in order to provide *online payment* services, financial institutions as *issuers*, previously needed to collaborate with network provider companies.

2. Legal Problems in Online Buying and Selling (*E-Commerce*) Reviewed from Laws and Regulations

The implementation of electronic transactions (*e-commerce*) not only provides convenience for consumers, but also makes it easier for producers when marketing goods and / or services because it affects cost and time savings. Changes in the model of trade transactions such as those that occur in electronic transactions are worthy of attention. The occurrence of new legal actions due to globalization of trade and advances in information technology still has a strong legal basis so as to create legal certainty. Therefore, online transactions are regulated in Law Number ¹⁰19 of 2016 concerning Changes to Law Number 11 of 2008 concerning Electronic Information and Transactions. Furthermore, the regulation can be reviewed in Law Number 8 of 1999 concerning Consumer Protection.

Online transactions are increasingly getting attention from online buying and selling enthusiasts along with the development of technology that facilitates the buying and selling process. Apart from being caused by the community's need for fast and easy and practical services because the community has a wider space for movement in choosing products. The high level of complaints by consumers in Indonesia related to fraud in buying and selling online certainly needs attention. This means that consumers in conducting online transactions need legal protection in the event of problems as May occur.¹¹

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The implementation of online buying and selling in practice raises several legal problems, the main problem in the field of *e-commerce* is in providing personal data security protection for parties who make internet transactions, especially buyers as consumers. Other problems such as the buyer who should be responsible for paying a certain amount of the price of the goods and/or services he purchased, but did not make the payment.

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Broadly speaking, there are several problems that occur in the online transaction process, namely:

- 1) Consumers cannot immediately identify, view, or touch the goods to be ordered;
- 2) Unclear information about the products offered and/or there is no certainty whether consumers have obtained various information that is worth knowing, or that should be needed to make a decision in a transaction;
- 3) Unclear status of legal subjects, of business actors;

- 4) There is no guarantee of transaction security and privacy and an explanation of the risks associated with the system used, especially in terms of electronic payments both by credit card and electronic cash;
- 5) Unbalanced risk charges, because generally for buying and selling on the internet, payments have been paid in advance by consumers, while goods are not necessarily received or will follow later, because the existing guarantee is a guarantee of delivery of goods not receipt of goods;
- 6) Transactions that are borderless in nature, raise questions as to which country's legal jurisdiction should be enforced.¹³

Furthermore, the problems arising in the online sale and purchase agreement are:

a. Validity of the agreement according to Article 1320 of the Civil Code

It is stated that there are 4 conditions for the validity of an agreement, namely: an agreement between the two parties to bind themselves, the ability to make an agreement, certain objects and halal causes. E-commerce is a modern method of commerce that does not bring together sellers and buyers, so for an agreement to occur it is difficult to know clearly when the agreement between the two parties occurs.

b. There is no guarantor of the legitimacy of the online store

A company or online buying and selling account in cyberspace that sells an online store is very easy to establish compared to setting up a company in the real world. As the reality is that the establishment of a company in cyberspace requires permission from officials/agencies. However, in setting up or building an online store in cyberspace, only renting a place in cyberspace and creating an online store design web at an Internet Service Provider (ISP) then this online store can already operate like a store in the real world.

c. Transaction security issues related to guarantees of legal certainty

The implications of the development of online buying and selling are felt to have positive sides and negative sides. The positive aspect is that trading on the internet through an online network can increase the role and function of trading while providing an efficiency effect. The negative aspect is the issue of security in transactions using *E-commerce* media and juridically related to legal certainty guarantees. The security issues at issue in this aspect are the problem of confidentiality of the message, the problem of how to get the message sent to the recipient's integrity, the problem of the validity of the transaction actor and the problem of the authenticity of the message so that it can be used as evidence

Legal remedies that can be taken in the event of default in buying and selling transactions via the internet (*E-commerce*) there are two ways of dispute resolution, namely through the court which is possible if the parties to the agreement have not chosen uapay for dispute resolution outside the court or the efforts to resolve disputes outside the court are unsuccessful and the resolution of disputes outside the court which can be taken through the Consumer Dispute Resolution Agency (BPSK). Although it is not a medium that consumers and businesses must take to resolve their disputes. This BPSK is devoted to resolving the dispute within 21 days of receipt of the lawsuit other than through BPSK. It can also be resolved by means of arbitration, conciliation and mediation.

C. CONCLUSION

Basically, the conditions for the validity of the sale and purchase agreement are already stated in Article 1320 of the Civil Code, this can also be a reference to the conditions for the validity of a sale and purchase agreement through *E-commerce / online*. Because *E-commerce* is also a buying and selling activity whose difference is carried out through online media. It's just that in buying and selling hammering ecommerce is done through internet media that can speed up, simplify and buy and sell transactions are not available.

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Footnotes:

- 1) Ahmad M. Ramli, *Cyber Law and IPR in the Indonesian Legal System*. (Jakarta: Refika Aditama, 2004).p. 1
- 2) Anastasia Diana, *Get to know E-Business*. (Yogyakarta: Andi Offset, 2001).p. 75
- 3) Dikdik M. Arif Mansyur Gultom and Elisatris, *Cyber Law (Legal Aspects of Information Technology)* (Bandung: Rafika Aditama, 2005).p. 144
- 4) Superior Pambudi Putra and Java Creatiit, *Successful online buying and selling*. (jakarta: Elex Media Komputindo, 2013).p. 3
- 5) Raden Subekti and R. Tjitrosudibio, *Civil Code* (jakarta: PT Pradnya Paramita, 2004).p. 339
- 6) Gemala Dewi, *Islamic Alliance Law in Indonesia* (jakarta: Kencana Prenada Media Group, 2005).p. 200
- 7) Burhanuddin S, *Sharia Contract Law*. (Yogyakarta: BPFE, 2009).p. 214
- 8) *Ibid*
- 9) S, *Sharia Contract Law*.pp. 214-217
- 10) Ita Susanti, "Juridical Review of Consumer Protection of Online Shopping Based on Law No. 8 of 1999 on Consumer Protection juncto Law No. 11 of 2008 on Electronic Information and Transactions," *Your Sigma Journal* 09, no. 01 (2017): 20.
- 11) Esther Dwi Magfirah, *Consumer Protection In E-Commerce*. (Jakarta: grafikatama jaya, 2009).p. 41

- 12) Ita Susanti, "Juridical Review of Consumer Protection of Online Shopping Based on Law No. 8 of 1999 concerning Consumer Protection juncto Law No. 11 of 2008 concerning Electronic Information and Transactions", " *Your Sigma Journal* 9, No. 1 (2017): 20.
- 13) Abdul Halim Barkatullah, *Consumer Rights* (Bandung: Nusa Media, 2010). P. 13

Bibliography

- 1) Barkatullah, Abdul Halim. *Consumer Rights*. Bandung: Nusa Media, 2010.
- 2) Creatiit, Unggul Pambudi Putra and Java. *Successful online buying and selling*. Jakarta: Elex Media Komputindo, 2013.
- 3) Goddess, Gemala. *Islamic Binding Law in Indonesia*. Jakarta: Kencana Prenada Media Group, 2005.
- 4) Diana, Anastasia. *Get to know E-Business*. Yogyakarta: Andi Offset, 2001.
- 5) Gultom, Dikdik M. Arif Mansyur, and Elisatris. *Cyber Law (Legal Aspects of Information Technology)*. Bandung: Rafika Aditama, 2005.
- 6) Ita Susanti. "Juridical Review of Consumer Protection of Online Shopping Based on Law No. 8 of 1999 on Consumer Protection juncto Law No. 11 of 2008 on Electronic Information and Transactions." *Your Sigma Journal* 09, no. 01 (2017): 20.
- 7) Magfirah, Esther Dwi. *Consumer Protection In E-Commerce*. Jakarta: grafikatama jaya, 2009.
- 8) Ramli, Ahmad M. *Cyber Law and IPR in the Indonesian Legal System*. Jakarta: Refika Aditama, 2004.
- 9) S, Burhanuddin. *Sharia Contract Law*. Yogyakarta: BPFE, 2009.
- 10) Subekti, Raden, and R. Tjitrosudibio. *Civil Code*. Jakarta: PT Pradnya Paramita, 2004.
- 11) Susanti, Ita. "Juridical Review of Consumer Protection of Online Shopping Based on Law No. 8 of 1999 on Consumer Protection juncto Law No. 11 of 2008 on Electronic Information and Transactions", " *Your Sigma Journal* 9, no. 1 (2017): 20.