

ONLINE BUYING AND SELLING ARRANGEMENTS BASED ON CONSUMER PROTECTION AND ELECTRONIC INFORMATION AND TRANSACTIONS IN INDONESIA

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Abstract

This study aims to analyze the online trading arrangements based on Law Number 8 of 1999 concerning consumer protection and Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning electronic information and transactions. The method used is normative juridical. The results show that legal protection for online shopping consumers can be provided in terms of legal certainty as stipulated in the laws and regulations governing online shopping, namely Law Number 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Transaction Information in conjunction with Law No. 8 of 1999 concerning Consumer Protection. The existence of an electronic contract as regulated in Article 18 (1) of the ITE Law is recognized and has the same position as a conventional sale and purchase contract. Through electronic contracts, consumers can sue business actors if a dispute arises due to the electronic transaction.

Keywords: Legal Protection, Consumers, Buying and Selling, Electronics, Online Transactions

A. INTRODUCTION

The development of information technology has changed people's habits in making buying and selling transactions. The habit of people who previously carried out buying and selling transactions directly or face-to-face, is now slowly changing into a new style, namely buying and selling transactions via the internet or online transactions. Online transactions are a new way of buying and selling activities by utilizing advances in information technology.^{1,2}

Online transactions are developing in the community as a result of technological developments and the increasing number of internet users in Indonesia. Trade based on advanced technology, e-commerce has reformed conventional commerce where the interaction between consumers and companies that was previously carried out directly becomes an indirect interaction. *E-commerce* has changed the classic business paradigm by fostering models of interaction between producers and consumers in the virtual world.³

In today's digital era, especially Indonesia, Online Buying and Selling has been very massive in its development. Shopping online makes it very easy for people to shop by only ordering to the online

shop (online shop) through their gadgets and without having to shop at supermarkets or supermarkets.⁴

Data from the Ministry of Information shows that the growth of the value of electronic commerce (*e-commerce*) in Indonesia reached 78 percent, the highest in the world. Indonesia is the 10th largest country in 'e-commerce' growth with a growth of 78 percent and is ranked 1st. While Mexico ranked second, with a growth value of 59 percent.⁵

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.⁶

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 19 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.⁸

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.⁹

Broadly speaking, there are several problems that occur in the online transaction process, namely:¹⁰

- 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;¹¹
- 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;¹²
- 6) Transactions that are borderless in nature, raise questions as to which country's legal jurisdiction should be enforced.¹³

Based on the description above, the author is interested in reviewing electronic transactions or e-commerce based on Law Number 8 of 1999 concerning Consumer Protection and Law Number 19 of 2016 concerning Changes to Law Number 11 of 2008 concerning Electronic Information and Transactions.

B. DISCUSSION

1. Online Buying and Selling Arrangements Based on Law Number 8 of 1999 concerning Consumer Protection

Electronic transactions practiced in online transactions give birth to the power of bargaining power that is not equal between business actors and consumers. It can be explained by the fact that business actors who sell their goods and / or services online often include standard contracts, giving rise to *unequal bargaining power*. The weak position of consumers with business actors in conducting online transactions is certainly very detrimental to consumers and has violated consumer rights regulated in Article 4 of Law Number 8 of 1999 concerning Consumer Protection.¹⁴

Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as the Consumer Protection Law) defines consumer protection as follows:

"All efforts that ensure legal certainty to provide protection to consumers. Consumer protection has a broad scope, including consumer protection of goods and services, starting from the stage of activities to obtain goods and services to the consequences of using these goods and / or services."

The scope of consumer protection can be distinguished in two aspects, namely:

1. Protection against the possibility of goods being handed over to consumers does not correspond to what has been agreed;
2. Protection against the imposition of unfair conditions on consumers.¹⁵

In the transaction of buying and selling goods and services, there are at least two interconnected parties, namely: first, the provider of goods or service providers, second, the user of the goods or services. The two parties in the economic literature, the first group is referred to as entrepreneurs or business actors, while the second group is referred to as consumers and whether we realize it or not, every human being is a consumer.¹⁶

According to Article 1 paragraph 2 of Law Number 8 of 1999 concerning Consumer Protection, consumers are:

"Everyone who uses goods and/or services available in society, whether for the benefit of oneself, family, others or other living beings and not to be traded."

Consumers in this discussion are consumers who buy a product online where the product is used directly and not for resale or end consumers.

Based on Article 1 number 3 of the Consumer Protection Law, business actors are:

"every individual or business entity, whether in the form of a legal entity or not a legal entity established and domiciled or carrying out activities within the jurisdiction of the Republic of Indonesia, either alone or jointly through agreements to carry out business activities in various economic fields".

Business Actors in Online Buying and Selling include business actors who run Online Stores which provide transaction services through online media with websites and Business Actors producers of goods that produce goods where marketing their goods through Online Store services, and consumers who are discussed in this case are every user of goods or services for the needs of themselves, family or household, and not to produce other goods/services or trade them again, there is a consumer transaction which means the process of transferring ownership or enjoyment of goods or services from the provider of goods or service providers to consumers.

Based on Article 4 of the Consumer Protection Law, there are 2 articles on consumer rights that are often violated by business actors in buying and selling online, namely:

Article 4 letter a.

"The right to comfort, security, and safety in consuming goods and/or services"

Article 4 letter c.

"The right to true, clear, and honest information regarding the condition and guarantee of goods and/or services;"

More emphatically, in Article 7 of the Consumer Protection Law, there are at least 2 Articles on the Obligations of Business Actors, namely this Online Store, namely:

Article 7 letter b.

"Providing true, clear and honest information regarding the condition and guarantee of goods and/or services and providing explanations for use, repair and maintenance"

Article 7 letter f.

"Providing compensation, indemnity and/or compensation for losses due to the use, use and utilization of goods and/or services traded"

There is a problem if consumers experience losses in terms of using online store services, if it can be seen from the formulation of Article 1 Number 2 and Article 1 Number 3 of the Consumer Protection Law, namely Business Actors, namely Online Store Owners who offer services to consumers if they violate Consumer Rights and Their Obligations, business actors, namely Online Store Owners, can be held accountable and are obliged to provide compensation, indemnity and/or replacement of services and/or goods.

More emphatically, Article 8 of the Consumer Protection Law prohibits business actors from trading goods/services that are not in accordance with the promises stated in the label, etiquette, description, advertisement or sales promotion of the goods and/or services. Based on this article, the inconsistency of the specifications of the goods you receive with the goods listed in the advertisement / photo of the offer of goods is a form of violation / prohibition for business actors in trading goods. Then consumers according to Article 4 letter h UUPK are entitled to compensation, compensation and/or replacement if the goods and/or services received are not in accordance with the agreement or are not as they should be. Meanwhile, the business actors themselves according to Article 7 letter g of the PK Law are obliged to provide compensation, compensation and/or replacement if the goods and/or services received or utilized are not in accordance with the agreement.

According to Article 19 of Law Number 8 of 1999 which reads as follows:

Business actors are responsible for providing compensation for damage, pollution, and or consumer losses due to consuming goods and or services produced or traded.

Compensation as referred to in paragraph (1) can be in the form of refunds or replacement of goods and/or services that are similar or equivalent in value, or health care and/or compensation in accordance with the provisions of the applicable laws and regulations.

The provision of compensation is carried out within a grace period of 7 (seven) days after the transaction date.

The award of compensation as referred to in paragraphs (1) and (2) does not eliminate the possibility of criminal prosecution based on further evidence of the existence of an element of guilt.

The provisions as referred to in paragraphs (1) and (2) do not apply if the business actor can prove that the error is the fault of the consumer. It can also be categorized in actions that can harm consumers in the sense that the agreed transaction is not as if the delivery of goods is not in accordance with what is ordered by consumers both in terms of quality, quantity and type of goods.

Based on Law Number 8 of 1999 concerning Consumer Protection, it is a guideline in this regard. If the business actor is proven to be right to harm consumers, then administrative actions taken by the government can be used as evidence for aggrieved consumers. So that the evidence can be used by consumers and means making it easier for consumers to file their lawsuits. Administrative sanctions in the form of determining compensation of up to Rp. 200,000 (two hundred thousand rupiah) if the business actor violates Article 19 paragraph (2), paragraph (3) of Law Number 8 of 1999 concerning Protection and article 20 which reads: "Advertising business actors are responsible for the advertisements produced and all consequences caused by the advertisements."

Article 26 of Law Number 8 of 1999 concerning Consumer Protection which reads:

"Business actors who trade services are required to fulfill the agreed and/or promised guarantees and/or guarantees.

Article 50 of Law Number 8 of 1999 concerning Consumer Protection which reads:

"The consumer dispute resolution body referred to in Article 49 paragraph (1) shall consist of: a. the chairman concurrently a member; b. the vice chairman concurrently a member; c. members."

If the business actor does not carry out their obligations, the business actor can be punished under Article 62 of the Consumer Protection Law, which reads:

"Business actors who violate the provisions as referred to in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letter a, letter b, letter c, letter e, paragraph (2) and Article 18 shall be punished with a maximum imprisonment of 5 (five) years or a maximum fine of 5 Article 62 of Law Number 8 of 1999 concerning Consumer Protection of a lot of Rp. 2,000,000,000.00 (two billion rupiah)."

Non-compliance with the content of consumer transactions, obligations, and prohibitions as stipulated in the Consumer Protection Law can cause disputes between business actors and consumers. According to Sidabalok (2014:127) consumer disputes can stem from two things: 1. business actors do not carry out their legal obligations as stipulated in the law;

2. Business actors or consumers do not comply with the contents of the agreement. Consumer dispute resolution is contained in the PK Law regulated in Article 19, Article 23, Chapter X on Dispute

Resolution from Article 45 to Article 48 and is connected with Chapter XI on Consumer Dispute Resolution Bodies in Articles 49 to 58.

Thus, three forums and ways to resolve consumer disputes are open, as follows: 1). Settlement of consumer disputes with immediate demands through negotiation, consultation, conciliation, mediation, and expert assessment forums, 2) Settlement of consumer disputes through the Consumer Dispute Resolution Agency, 3) Resolution of consumer disputes through the courts.

2. Online Buying and Selling Arrangements Based on Law Number 19 of 2016 concerning Changes to Law Number 11 of 2008 concerning Electronic Information and Transactions

This electronic transaction has been well regulated by Law Number 19 of 2016 concerning Changes to Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the ITE Law). So that consumers who make transactions become more convenient and safer. Of course, with this business model, it is said to be more practical and easier. The practicality of these conditions causes distance to no longer be an obstacle in transacting goods and can also be said to be practical in the business world. So that business actors can make transactions without having to meet in person.¹⁷

The electronic transaction model or *e-commerce* is basically the same as the conventional transaction model. But the difference in electronic transactions of agreements is carried out electronically or electronic contracts. The electronic transaction model that uses electronic agreements or electronic contracts also makes several elements that must be fulfilled in it. The elements in the electronic agreement are well regulated in several articles to support consumer convenience in transacting. The elements of the aim are clearly to provide legal certainty as one of the legal protections in electronic transactions.¹⁸

Article 1, point 2 of the ITE Law, states that Electronic Transactions are:

"Legal acts carried out using computers, computer networks or other electronic media, electronic buying and selling transactions are one of the manifestations of the above provisions".

In buying and selling transactions via the internet, the relevant parties in it carry out legal relations as stated in the form of agreements or contracts that are carried out electronically and in accordance with Article 1 number 17 of the ITE Law are referred to as electronic contracts, namely agreements contained in electronic documents or other electronic media. E-commerce agreements are known to two actors, namely merchants / sellers who make sales and buyers / customers / consumers who act as buyers.³⁸

An electronic contract according to Article 47 paragraph (2) of Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions (PP PSTE) is considered valid if:

- a) There is an agreement of the parties;
- b) Conducted by a capable legal subject or who is authorized to represent in accordance with the provisions of laws and regulations;
- c) There are certain things; and
- d) The object of the transaction must not conflict with laws and regulations, decency, and public order

Business actors who offer goods or services electronically are required to provide complete and correct information about the terms of the contract, manufacturer and product. In Article 17 of the ITE Law paragraphs 1 and 2. Electronic contracts in electronic transactions, must have the same legal force as conventional contracts. Therefore, the electronic contract must also be binding on the parties as Article 18 Paragraph (1) of the ITE Law states that "electronic transactions poured into electronic contracts are binding on the parties". As with conventional contracts, parties have the freedom to choose the laws applicable to electronic transactions of an international nature. In Article 18, Paragraph (2) of the ITE Law.

In this regard, Article 18 paragraph (3) of the ITE Law, states that if the parties do not make a choice of forum in an international electronic contract, the principle that can be used is the principle contained in Article 18 paragraph (4) of the ITE Law. This article states that the parties have the authority to establish a court forum, arbitration, or other alternative dispute resolution institution authorized to handle disputes that may arise from international electronic transactions.

Before making an electronic transaction, the parties agree on an electronic system that will be used to make transactions. Article 20 Paragraph (1) of the ITE Law. Article 20 Paragraph (2) In conducting electronic transactions, the relevant party often entrusts a third party as an electronic agent. Responsibility for the consequences in the implementation of electronic transactions must be seen from the authority given to agents by the parties to make transactions as mentioned in Article 21, Paragraph (1) of Article 21, Paragraph (2) number 1 of Article 21, Paragraph (2) of UITE. If the transaction is carried out through an electronic agent, then the responsibility of the electronic agent operator regarding this matter is as stated in Article 21, Paragraph (2) number 3, Article 21 Paragraph (3), Article 21 Paragraph (4) of the ITE Law.

The legal protection of the parties to electronic business transactions is as follows:¹⁹

- 1) Legal protection for merchants is especially emphasized in terms of payment, merchants require to make payment repayment and then confirm the payment, only then will the delivery of the goods ordered.
- 2) Legal protection for consumers lies in the guarantee in the form of a return or exchange of goods if the goods received do not match the ordered.
- 3) The privacy of personal data of users of electronic media must be legally protected. The provision of information must be accompanied by the consent of the owner of the personal data. Legal protection for parties conducting E-Commerce transactions, which is contained in Article 25 of the ITE Law "Electronic information and or electronic documents compiled into intellectual works, internet sites, and intellectual works contained therein are protected as intellectual property rights based on the provisions of applicable regulations".

Electronic contracts in electronic transactions must have the same legal force as conventional contracts. The electronic contract must also be binding on the parties as Article 18 paragraph (1) of the ITE Law states that the electronic transaction set forth in the electronic contract is binding on the parties. Parties to online buying and selling have the freedom to choose the law that applies to electronic transactions that are international in nature, as explained in Article 18 of the ITE Law that the parties have the authority to choose the law that applies to the international electronic transactions they make. In addition, the parties also have the authority to determine the dispute resolution forum, either through the courts or through alternative dispute resolution methods.²⁰

Buying and selling transactions, even though they are carried out online, based on the ITE Law and PP PSTE are still recognized as electronic transactions that can be accounted for. The Electronic Contract itself according to Article 48 paragraph (3) of the PP PSTE must at least contain the following; identity data of the parties; objects and specifications; terms of Electronic Transactions; price and cost; the procedure in the event of any cancellation by the parties; provisions that give the aggrieved party the right to be able to return the goods and/or request replacement of the product if there is a hidden defect; and the choice of law for the settlement of Electronic Transactions.²¹

Online transactions are basically transactions or sales and purchase contracts in general, it's just that they are carried out online, because in terms of contracts, they are still referred to the Civil Code. As an ordinary trade, online buying and selling is subject to and complies with the provisions of Articles 1457 to 1540 of the Civil Code. According to Article 1457 of the Civil Code, "A sale and purchase is an agreement by which one party binds itself to surrender a treasury with the other party to pay the price that has been promised". In Article 1458 of the Civil Code it is written "The sale and purchase is deemed to have taken place between the two parties, as soon as these persons have reached an agreement on the treasury and its price, even though the treasury has not been handed over and the price has not been paid".²²

When there is a dispute or violation in terms of buying and selling or online transactions, there must be proof. As stipulated in Article 1865 of the Civil Code, the event on which the right is based must be proved by the plaintiff. That is, if a claim for damages is based on an event of default, the plaintiff needs to prove:²³

- 1) The existence of an engagement relationship (contract, agreement);
- 2) The existence of parts of obligations that are not fulfilled by the business actor; and
- 3) The emergence of losses for consumers.

In terms of proof, in online shopping as regulated in Article 40 of the ITE Law, evidentiary tools in electronic transaction activities include evidence;

- 1) As referred to in the provisions of the Criminal Procedure Law;
- 2) Others in the form of electronic documents and electronic information.²⁴

C. CONCLUSION

Legal certainty of protection for consumers who make online transactions is needed. Not only because consumers have important rights to be enforced, but also to grow awareness of business actors so as not to commit fraud against consumers. By growing awareness of business actors about the importance of consumer protection so that an honest and responsible attitude in doing business grows. In this case, in addition to the existence of UUPK, regulations that specifically regulate online buying and selling activities are needed because they can not only provide protection for consumers but also online business people.

Legal protection for consumers of online shopping can be provided in terms of legal certainty contained in the laws and regulations governing online shopping, namely Law Number 19 of 2016 concerning Changes to Law No. 11 of 2008 concerning Electronic Transaction Information juncto Law No. 8 of 1999 concerning Consumer Protection. The existence of electronic contracts as stipulated in Article 18 (1) of the ITE Law is recognized and has the same position as conventional sales and purchase contracts. Through electronic contracts, consumers can sue business actors if a dispute arises as a result of the electronic transaction.

Footnotes:

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