

Legal Protection Of Criminal Acts Of Electronic Selling And Buying Transactions From A Cyber Law Perspective

Nana Lukmana¹

{nana.lukmana1103@gmail.com}

Borobudur University Indonesia¹

Abstract. The criminal act of carrying out electronic transactions, namely buying and selling, is a legal problem that is currently developing with a fairly high number of cases. This research aims to carry out a juridical analysis and presentation of electronic buying and selling transactions as well as legal protection efforts for the parties involved in carrying out these transactions. Legal issues regarding cyber law include establishing cross-border jurisdiction, identifying and prosecuting perpetrators of electronic crimes, and also considering establishing ethics and privacy laws in handling and dealing with electronic transaction cases. This research will identify various types of criminal acts that may occur in electronic transactions and also preventive measures. The results of this research provide legal guidance for parties involved in electronic buying and selling transactions, including consumers, business actors and third party e-commerce platform providers. Apart from that, this research is also expected to provide enlightenment for policy-making institutions to update cyber law in Indonesia.

Keywords: Legal Protection, Online Buying and Selling, Cyber Law

1 Introduction

The current development of information technology has had a huge influence on human life. This development has caused relations in this world to have no boundaries, which has had an impact on significant social and economic changes in society. The development of information technology will have both good and bad consequences, with good impacts, namely bringing prosperity and progress to society, but the bad impact is that crime is also increasingly developing with developing motives and methods, also by using computers and computer networks as a means to commit crimes such as cheating, online gambling, identity fraud, child pornography, terrorism, stealing intellectual property rights and many other crimes which can bring material and non-material losses to someone who uses them and can cause damage to the fabric of life of the nation and state.

Crimes that occur with the use of the internet hurt the development of technology, crimes that occur

in various forms and types have consequences for legal protection for users, remembering that every human being must be given protection by their dignity as a human being. One form and manifestation of the state's responsibility in protecting its people is by providing concrete legal guarantees for actions by protecting the public from all kinds of crimes or other criminal acts that may be experienced by the public both in the realm and in the cybernetic universe.

Indonesia is a country of law as affirmed in the constitution. As a country of law, of course, the state must protect each of its people from every action that brings harm or actions that can damage the life order of the nation and state. Nowadays, crimes that can be dangerous or bring loss are crimes involving the use of the internet or what is usually called cybercrime. This crime does not recognize time and space and is also experiencing rapid development so that technological developments are misused by individuals who do not have responsibility for personal gain, which makes it difficult to take action or identify someone who commits this crime.

Currently, fraud regarding electronic buying and selling transactions is becoming increasingly common. Fraud is a form of crime whose regulations are regulated in Article 378 to Article 395 of the Criminal Code which explains the types of unlawful acts of fraud. Fraud is a crime that initially originates from a feeling of trust between one party and another which then gives rise to an agreement to do something. However, this trust was subsequently violated by committing a criminal act of fraud.

Economic activities are easy targets for use in Internet media to carry out transactions. One of the economic activities that is very high in utilizing internet facilities is online buying and selling transaction activities. This technological advancement has given birth to a modern world that makes everything easier because, in the online world, those who sell and those who buy can communicate without being limited by time or place without the need for face-to-face meetings.

The development of this technology has had quite a big impact on the increase in wired purchasing and trade transactions, thus having the effect of giving birth to types of online buying and selling fraud. Technological developments in Indonesia have been accommodated in Law Number 19 of 2016 about Electronic Information and Transactions, which is then known as the ITE Law. The ITE Law is a regulation that regulates activities in carrying out transactions electronically. The ITE Law also provides color for reforming criminal law to provide guarantees of legal certainty for the public in functioning online transactions.

In online purchasing and trading activities, it is known as a digital buying and selling agreement with a digital buying and selling agreement where this buying and selling agreement can be in the form of a direct agreement between one party and another via chat or if using an online purchasing and trading site then this purchasing and trading agreement. It is assumed that there has been an agreement when the party who wants to buy has added the goods to the basket and has made payment for the transaction bill, then the party selling will process the order and deliver the goods ordered by the buyer. However, this activity is sometimes associated with cases where it is easy to commit fraud by not delivering the goods needed. One case that occurs is a buyer who has paid for his order but the goods are not delivered because the goods being sold are fictitious goods or the product given

to the buyer is damaged or does not match the specifications made in the offer.

The risk can be minimized if the online purchasing and trading process uses registered wired purchasing and trading companies such as Tokopedia, Lazada, Bukalapak, Shopee, and so on. Because this sales company has a systematic security system to prevent online buying and selling fraud, so it seems safer, when compared to online buying and selling directly between sellers and buyers without going through an online company. As explained previously, in Indonesia there is an ITE Law to regulate matters relating to electronic transactions, including online buying and selling. However, the fact is that there are still many criminal acts of fraud in these transactions. It may be because law enforcement is not yet strict enough and it is not uncommon for law enforcement officials not to implement the legal rules regarding electronic transactions well enough.

Some literature reviews

1.1 Online Buying and Selling

In Article 1457 of the Civil Code, sale and purchase is a bargain in which an individual compels himself to hand over an object and the other party to pay the assured bill. Meanwhile, according to Abdulkadir Muhammad, a goods such as agreement is an agreement in which the seller transfers or agrees to transfer ownership rights to goods to the buyer in return for a sum of money called the price.[1]

The implementation of buying and selling is the act of contracting a group of individuals to any number of different persons. The article does not provide clear boundaries, because on the one hand, it is too broad and on the other hand it is not complete. The word "implementation" here has too broad a meaning because it seems as if all actions are included in it. In general, in Indonesia, it is governed by the Civil Code in Book III, Engagements. According to Civil Code Article 1233, the source of the contract is an agreement that arises from an agreement and an agreement that arises from the law.

For an obligation to occur under the law, it must always be linked to a particular fact or event. In other words, for an agreement to arise, legal reality is always required. Apart from the obligations that arise from the law, the implementation of purchasing and trading is another source of obligations.

The meaning of buying and selling is regulated in Civil Code section 1313 confirmed that "an agreement is a deed by when one or several individuals engage themselves to another person or people.". The implementation of the sale and purchase may be valid or not determined based on the terms of the legitimacy of a deal. The conditions for the validity of an agreement are regulated in Section 1320 of the Civil Code which specifies the clauses of the cogency of a settlement, namely:

- a) Those who bind themselves agree.
- b) The ability to create an agreement.
- c) A certain thing
- d) A lawful cause. [2]

Based on the legal conditions above, it can be said that the first two conditions are called subject

conditions, because they concern the person or subject carrying out the sale and purchase, while the last two conditions are called objective conditions because they concern the sale and purchase itself or the object of the sale and purchase then the legal action carried out.

Furthermore, regarding the elements contained in a sale and purchase implementation, where J. Satrio illustrated that in the agreement there are several elements, namely as follows:

- a) Essential elements
An element that always exists, an absolute element, without which it would be impossible to exist. For example, a halal cause is an essential element for implementation, such as in the implementation of buying and selling, the price and goods agreed upon by both parties must be there.
- b) Natural elements
Elements that are regulated by law, but which the parties can remove or replace. For example, the seller's obligation to bear delivery costs can be waived by agreement of both parties.
- c) Elements of accidental
Elements added by the parties that the Law itself does not regulate. For example, in the implementation of buying and selling, certain equipment items can be excluded.[3]

The implementation of buying and selling has several types of divisions, namely as delimited in Section 1319 of the Civil Code which affirms that the first two groups are given a special name by a law called (benoemde or nominaatcontracte), such as buying and selling, renting, agreements that are not known by a specific name in law, are called anonymous agreements (onbenoemde or innominaat contracte), such as hire purchase and fiduciary agreements.[4]

Apart from the divisions regulated in the Civil Code, there are also several divisions of agreements put forward by several legal experts in Indonesia. Like the division of agreements discovered by J. Satrio, there are five types of agreements, namely:

- a) Free agreement
This agreement is an agreement in which one party provides an advantage to another party without obtaining any advantage or benefit for himself. Examples include grants, free loans, free loans, and free safekeeping of goods.
- b) Agreement on expenses
This agreement is an agreement where one party's achievements are always contradicted by the achievements of the other party, where the counter achievements are merely a limitation of one's achievements or merely accepting back one's achievements.
- c) Unilateral agreement
This agreement is an agreement that creates obligations (towards the counterparty), while the other party only has rights. Examples of these agreements are grants, power of attorney agreements without wages, and free custody of goods.
- d) Reciprocal agreement
This agreement is an agreement that creates obligations and rights for both parties, and these rights and obligations are related to each other. Examples include buying and selling, renting and exchanging.

- e) The reciprocal agreement is not perfect

This agreement is one-sided because the main obligations only lie with one party. However, in certain cases, obligations may arise for other parties. For example, an agreement to grant power of attorney without remuneration.

Online purchasing and trading events are currently progressively widespread, mostly as the sites used to succeed online deal of purchasing and selling are improving and diversifying. However, as is known, in the online buying and selling system, the products presented merely consist of explanations of product specifications and images whose veracity cannot be ensured. For this reason, as a buyer, it is critical to find out the truth about whether the item you want to buy is suitable or not.

According to the Big Indonesian Dictionary, buying and selling is a mutually binding agreement between the seller, namely the party who delivers the goods, and the buyer as the party who pays the price of the goods sold.[5] According to Rahmat Syafe'i, in language buying and selling is the exchange of something for something else.[6]

The word Online consists of two words, namely On (English) which means live or within, and Line (English) which means line, track, channel, or network. In online language, it can be interpreted as "in the network" or connection. Online is a state of being connected to an internet network. When we are online, we can carry out activities actively so that we can establish communication, both one-way communication such as reading news and articles on websites, and two-way communication such as chatting and sending emails to each other. Online can be interpreted as a situation where while using a network, one device is connected to another device so that they can communicate with each other.

From these definitions, it can be concluded that online purchase and trade is a mutually compelling bargain via the Internet between the seller as the party selling the goods and the buyer as the party paying the price of the goods being sold. Online buying and selling applies a buying and selling system on the internet. There is no direct contact between sellers and buyers. Buying and selling are done through a connected network using cell phones, computers, tablets, etc.

The legal basis that handles online buying and selling is:

- a) Law Number 19 of 2016 relate to Electronic Information and Transactions (UU ITE)
 - 1) In Article 1 paragraph (2) of the ITE Law, Digital transactions are administrative activities that take place via the use of machines, computer networks, and/or other types of electronic media.
 - 2) In Article 3 of the ITE Law, In selecting gadgets or technology-neutral decisions, the use of information technology and electronic transactions is based on the principles of certainty, utility, diligence, sincere intention, and freedom.
 - 3) In Article 4 of the ITE Law, the aim of utilizing electronic technology is to provide intelligence in the nation's life as a world information society and to develop trade and the national economy to increase the sense of prosperity for society.
- b) Civil Code

- 1) According to the Civil Code, Section 1313, an agreement is an activity when one or more persons tie themselves to a particular individual.
- 2) In Book III of the Civil Code, agreements apply the principle of openness and the contract freedom principle to give freedom to the parties in agreeing as long as there is an agreement, legal capacity to act, a certain thing, and certain triggers, and lawful reasons. Likewise, electronic transactions are regulated in the Civil Code which adheres to the contract freedom notion.
- 3) In Article 1338 paragraph (1) of the Civil Code, it is affirmed that every agreement that is legally formed is enforced as law for the parties who formed it. It means that every person has the autonomy to define the form, type, and substance of their agreement, provided that it does not conflict with the applicable laws and regulations, morality, and public order as well as the requirements for the agreement's legitimacy.
- 4) Under Civil Code Section 1320, the prerequisites for the legitimacy of a deal comprise the consent of those reminded, the power to establish an agreement, a definite item, and a justifiable purpose.

Customers and sellers do not interact immediately in online transaction activities in one place but rather through cyberspace.

The subject of online buying and selling is no different from conservative buying and selling, namely the entrepreneur actor as the seller who sells the goods and the buyer as the consumer who pays the price of the goods. Online sales and purchases are sometimes only based on reliance, denoting that the perpetrators of cyber buying and selling are occasionally unclear, making them vulnerable to fraud. As for what is the object of online buying and selling, namely goods or services purchased by consumers, the goods or services are not seen directly by the buyer as the subject of cyber purchase and sales. It is unlike the conventional purchase and trade where traders and customers can meet and see the object of sale and purchase directly, thus allowing buyers to get certainty regarding the quality of the goods they want to buy so that there is very little fraud occurring.

The first business process in this e-commerce system is called information sharing. In this process, the seller's principle is to look for and attract as many potential buyers as possible, while the buyer's principle is to try as hard as possible to find the desired product or service and try to find out other people's assessments of the product or service.

After information exchange activities are carried out, the next business process is to order products or services electronically. Two parties to a transaction must carry out certain agreement activities so that the purchasing process can be carried out legally, correctly, and safely. Purchases between two business entities are usually made over a specific network, such as EDI (Electronic Data Interchange) or an extranet. In this business process, four entity streams must be managed well, namely:

- a) Flow of goods (product flow)
- b) Flow of information (information flow)
- c) Flow of money (money flow)
- d) Flow of documents (document flow)

After the transaction is complete and the product has been distributed to consumers, the final process, namely after-sales activities, is carried out. At this stage sellers and buyers carry out various activities or communications, such as:

- a) Complaints about product quality
- b) Questions or requests for information regarding other products
- c) Notification of new products offered
- d) Discussion about how to use the product well

According to Cavanilas and Nadal in the Research Paper on Control Law, as quoted by M. Sanusi Arsyad, online transactions in e-commerce have many types and variations, namely:

- a) Transactions via chat and video conference
- b) Transactions via e-mail
- c) Transactions via the web or site [7]

There are several places usually occupied by business people to sell online, including:

- a) Marketplaces
Business actors sell products for sale by uploading product photos and product descriptions for sale in the marketplace. The marketplace has provided an organized system so that business actors only need to wait for notification if a consumer makes a purchase.
- b) Website
An online business actor can create a site specifically aimed at doing online business. The site has an address or domain name that matches the name of the online shop. To create a site with an appropriate name like that, businesses must pay hosting fees. Several web providers offer site packages at different prices. Some include a template or design for the site, and some are separate.
- c) Weblogs
Business people who have a limited budget can rely on free blogs such as Blogspot or WordPress. With a blog format, business people can organize designs or photos of the products they sell.
- d) Forums
One of the most widely used places to sell online is forums which are used as places to buy and sell. Usually, these conversations are made available by society or community-based sites. From this forum, a person can discover whatever he is in search of and what he should trade. To access and make posts on a forum, business actors are required to sign up first to become members of the site.
- e) Social media
One tool that is quite effective for doing business online is media that touches people personally, namely social media.⁸

In Indonesia itself, several types of virtual purchase and trade transactions are usually conducted by online buying and selling consumers, including:

- a) Interbank transfer
Transactions using interbank transfers are the most common and popular type of transactions used by business people or online sellers. This type of transaction also makes

the confirmation process easier because the funds can be instantly proved by the recipient of the moneys or the seller. The process is that first the consumer sends the agreed funds, and then after the funds have arrived, the seller will send the promised transaction items. The disadvantage of interbank transactions is that they require high levels of trust from buyers before deciding to send funds. It is not uncommon for fraud to occur here, where after the funds have been sent it turns out the goods have not been received.

b) COD (Cash on Delivery)

It is practically impossible to say that the COD method is an electronic purchase and sale procedure, because the seller and buyer are directly involved, meet, bargain, and check the condition of the goods and then pay the price of the goods. The advantage of this system is that business actors and consumers can have more freedom in the transaction process. Consumers can see in detail the items they want to buy. This type of transaction is popularized by buying and selling websites such as Tokobagus, Berniaga, and others. The weakness of this system is the security of both business actors and consumers because the parties that business actors or consumers will encounter may be people with evil intentions.

c) Credit card

Credit cards are an increasingly popular means of payment, apart from making the funds verification process easier, buyers also do not need to carry out all stages of the transaction. However, because not all buyers have credit cards, this payment method is the second choice. Even users with credit cards will try to ensure that the business owner's shop has a high level of security to avoid data theft by certain parties.

d) Joint account

This type of transaction is also known as escrow. This payment method is different from the payment process via bank transfer. If in a bank transfer, the third party is the bank, whereas, with a joint account system, the third party is a payment institution that is trusted by both business actors and consumers. The process is that first, the consumer transfers funds to the joint account institution. After confirmation of the funds coming in, the joint account asks the business actor to send the products that were settled upon. If the goods have arrived, then the funds will be given to the business actor. With this system, the security of the funds provided by the buyer can be more guaranteed because the funds will only be released if the goods have arrived in the hands of the consumer. If a problem occurs, the funds can be withdrawn by the consumer.

e) Credit deduction typically used by e-commerce sites that offer digital things such as apps, music, ringtones, and games. Portable electronics or smartphones continue to dominate these financial transactions

1.2 Cyber Law

Cyber law is a decree that supplies regulations regarding activities in virtual reality using the internet link. Cyber law is a new form of law in Indonesia that specifically regulates activities related to the use of information and technology. Cyber law in Indonesia was formed by issuing Law Number 19 of 2016 concerning Information and Electronic Transactions.[8] Cyber Law is a legal aspect whose term originates from cyberspace law, the scope of which covers every aspect related to individuals or legal subjects who use and utilize internet technology starting when they

go online and enter cyberspace or cyberspace.

The term cyber law comes from cyber law, which is currently used internationally for legal terms related to the use of information technology. Other terms that are also used are Information Technology Law, Virtual World Law, and Mayantara Law. Academically, cyber law terminology has not yet become a common terminology. Other terminology for the same purpose such as The Law of the Internet, Law and the Information Superhighway, Information Technology Law, The Law of Information, Lex Informatica, and so on. In Indonesia itself, it seems that there is not yet an agreed term. The term is intended as a translation of cyber law, for example, Information Systems Law, Information Law, and Telematics Law (Telecommunications and Informatics).

Cyber Law is needed because internet-based cyber activities cannot currently be limited by state territory and can be carried out at any time. Even though the evidence is virtual and electronic, cyber activities are virtual activities that have a real impact.[9]

The principles underlying the formation of cyber law include:

- a) Subjective territoriality
This principle regulates the applicable law based on the location of cybercrime and the resolution of the criminal act is carried out in another country.
- b) Objective territoriality
This principle regulates the law that applies based on where the main consequences of the crime occurred and which has a very detrimental impact on the country concerned.
- c) Nationality
This principle regulates that the state has jurisdiction to determine the law based on the nationality of the perpetrator.
- d) Passive nationality
This principle regulates jurisdiction based on the victim's nationality.
- e) Protective principle
This principle regulates law based on the state's desire to protect the state's interests from crimes committed outside its territory, which is generally used when the victim is the state or government.
- f) Universality
This principle regulates that every country has the right to arrest and punish perpetrators of piracy and crimes against humanity.

The legal basis that regulates cyber law in Indonesia is:

- a) Criminal Code
- b) Law Number 19 of 2016 concerning Electronic Information and Transactions

1.3 Legal protection

As stated in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia, which reads "The Indonesian State is a state of law", based on the sound of this article, it is intended that every state administration in all fields must not conflict with the laws in force in this country. It is also confirmed by the provisions of Section 28D subsection one of the Republic of Indonesia's

1945 Constitution provides that "everyone has the privilege of recognition, guarantees, defense, and fair assurance of justice, as well as equal standing before the courts." Based on this, legal protection becomes essential in state life.

Legal safeguarding is the guarantee of the rights of people that have been violated by others, and it is provided to the community so that they have access to all of the privileges granted by law. Thus, legal protection is the various legal efforts that must be provided by law enforcement agencies in order to provide a sense of security, both emotionally and physically, from disruptions and various dangers from any person or entity.

Legal protection consists of two words, namely protection and law. According to the Big Indonesian Dictionary, the word protection is defined as a place of refuge, things (actions and so on) that protect. Meanwhile, according to Soedikno Mertokusumo, the term law is all the rules regarding behavior that apply in life together, the implementation of which can be enforced with sanctions.[10]

From Setiono, constitutional defense is an activity or endeavor to safeguard society from arbitrary actions by officials who do not follow the rule of law, as well as to promote discipline and tranquillity to allow people to fulfill their dignity as human beings.[11] Legal safeguarding as defined by Philipus M. Hadjon, is a personal scenario that expresses the requirement for several legal subjects to swiftly obtain several resources for an ongoing existence of those who are legal participants who are ensured and safeguarded by law, so that their authority is organized in the economic and political decisions they make, particularly in the allocation of resources among individuals and fundamental devices.[12]

Legal protection is the defense of human rights that have been violated by others, and this defense is supplied to the society so that they can appreciate all of the rights guaranteed by law.[13] According to CST Kansil, legal protection refers to a number of legal measures supplied by law enforcement personnel to ensure mental and physical safety from disruptions and other types of threats against any person.[14]

According to the Big Indonesian Dictionary (KBBI), legal protection is a place of refuge, and actions to protect. The linguistic meaning of the word protection has similar elements, namely elements of protective action, and elements of ways of guarding. Thus, the word protects against certain parties by using certain methods.[5]

Legal protection is something that is protected by legal issues via appropriate rules and legislation and its implementation is managed with sanctions. Legal protection can be classified into two, namely:

a) Preventive legal protection

Protection is provided by the administrators to avoid destructions before they occur. It is included in legislative rules to avoid infractions and to restrict the scope of responsibilities. In this preventive lawful security, legal subjects are entitled to raise objections or comments before a government judgment takes final form. The purpose is to evade disagreements from occurring. Preventive legal safeguarding is very important

for government activities based on freedom of action because it encourages the government to be more cautious when making discretionary judgments. There are no particular regulations in Indonesia relating proactive protection under the law.[15]

b) Repressive legal protection

This is the ultimate line of defense in the form of sanctions such as fines, jail, and other punishments imposed if a disagreement occurs or a legal infraction happens. The goal of repressive judicial safeguards is to settle a disagreement. This area of legal protection includes the management of legal defence by Indonesia's General Courts and Administrative Courts. The premise of constitutional safeguards for government actions is based on and stems from the notion of human rights recognizing and safeguarding because, in line with Western literature, the emergence of concepts regarding human rights acceptance and protection pointed towards constraints and establishment of community duties, and administration. The rule of law ideas are the second foundational concept underlying legal protection for government activities. Human rights have a primary place and can be related to the purposes of the rule of law when it comes to the acknowledgment and safeguarding of human rights.[16]

Legal protection aims to seek justice. Justice is produced via accurate reasoning, carried out fairly and honestly, and accountability for acts performed. To sustain justice in law, a feeling of justice and law must be upheld based on positive law, which demands the creation of a secure and tranquil society. Legal principles (Rechtidee) must be used to build justice in a nation of law (Rechtsstaat), not a national of power (Machtsstaat). The law operates as the protection of human benefits, law prosecution must pay concentration to 4 elements, namely:

- a) Legal Certainty (Rechtssicherheit)
- b) Legal Benefits (Zweckmassigkeit)
- c) Legal Justice (Gerechtigkeit)
- d) Legal Guarantee (Doelmatigkeit)[17]

From the description above, problems arise that will be discussed in this article, namely: what are the legal regulations for fraud from electronic buying and selling transactions in Indonesia and structures of legal security for victims of online buying and fraud selling.

2 Research Method

The analysis techniques used is a normative juridical tactic by analyzing existing theories or concepts related to the problem to be tested. The approach used is a statutory approach to examine statutory regulations relating to existing legal issues. A conceptual approach is used to research concepts and theories related to the problem topic to be discussed.

3 Results and Discussion

3.1 Cyber Law in Indonesia Regarding Fraud

With the development of information technology related to internet use, it has become a challenge for legal development in Indonesia. Crime using the internet is a form of crime that arises due to the use of internet technology. The rapid development in utilizing internet services has increased the

incidence of crime. With the increasing number of requests for internet access, crimes related to the use of information technology are increasing and following the development of the technology itself. More and more parties will experience losses due to the actions of cyber criminals if no law controls this. Before the enactment of Law Number 19 of 2016 concerning Information and Electronic Transactions (UU ITE), legal officials used the Criminal Code to handle cybercrime cases.

The rules in the Criminal Code are still too broad, as in:

- a) Article 362 of the Criminal Code which holds the theft.
- b) Article 406 of the Criminal Code which holds destruction or obliteration of goods.
- c) Article 282 of the Criminal Code which holds pornography crime.
- d) Article 378 of the Criminal Code which holds fraud.
- e) Article 372 and Article 374 of the Criminal Code which regulates about embezzlement.
- f) Article 154 of the Criminal Code which controls criminal acts of disturbance of public order.
- g) Article 311 of the Criminal Code which regulates acts of insult.
- h) Article 263 of the Criminal Code which holds the crime of document forgery.
- i) Articles 112, 113, and 114 of the Criminal Code which regulate the crimes of leaking secrets.
- j) Article 303 of the Criminal Code which controls gambling crimes.

Fraud is regulated in Article 378 of the Criminal Code. However, fraud via internet use is regulated in the ITE Law. The ITE Law regulates that scattering fake and misinforming news using the internet is fraud, which is the same as Article 378 of the Criminal Code.

The rules in the ITE Law have restrictions on electronic transactions. The strategic value of the presence of the ITE Law is actually in electronic transaction activities and utilization in the realm of information and communication technology (ICT). Previously this sector did not have a legal umbrella, but now it is becoming clearer that forms of electronic transactions can now be used as legal electronic evidence. Therefore, this law is the government's effort to provide clear and permanent legal protection against various types of negative electronic transactions. However, the arrangement in this case still has limitations. This limitation lies in legal actions that only depend on electronic transaction relationships, namely between producers and consumers as well as in the scope of reporting fake news and misdirection on the internet.[18]

3.2 Countering Fraud in Electronic Buying and Selling Transactions from a Cyber Law Perspective

Fraud regarding electronic buying and selling transactions often occurs in the use of developments in information technology. This type of fraud is increasingly common because many people have the desire to fulfill their needs easily, saving time and money. Forgery regarding electronic buying and selling is carried out in various ways, motives, and modes, from easy to complex.

Fraud regarding online buying and selling transactions is carried out virtually, but legally the action is a real criminal act by exploiting weaknesses in security when using the internet. Fraud regarding electronic purchasing and trading transactions has the same principles as conventional criminal fraud. What makes the difference is that the means for acting is using an electronic system using computers, the internet, or telecommunications devices. So, juridically, fraud regarding electronic

trade and vending dealings can be applied in the same way as the crime of conventional buying and selling fraud in the Criminal Code, because the ITE Law does not specifically regulate fraud using the internet. However, Article 28 paragraph (1) of the ITE Law can be imposed regarding intentionally spreading false or misleading news so that losses arise for consumers when carrying out electronic transactions. Apart from that, he could be threatened with Article 45, subsection (2) of the ITE Law, with an aggregate penalty of 6 (six) years into jail and/or a fine of IDR 1,000,000,000.00 (one billion rupiah). By proving using electronic evidence and/or printed results by Article 5 clause (2) of the ITE Law.

Even though the issue of electronic buying and selling has received legal certainty by The basic basis for regulating electronic commerce is Law Number 19 of 2016 on Information and Electronic Transactions, as well as Government Regulation Number 71 of 2019 on the Execution of Electronic Systems and Transactions.

However, even though there are legal regulations governing electronic transactions for sale and purchase, the fact is that society is still prone to fraud in online buying and selling. This is because law enforcers are not yet capable enough to properly implement existing legal regulations to anticipate, optimize, or suppress the occurrence of legal problems in electronic buying and selling transactions which are still very vulnerable to online buying and selling fraud.

Recent cases of fraud regarding electronic transactions for sale and purchase have caused anxiety in society because it is still difficult to find evidence and identify the perpetrators.[19] Legal problems that often occur in electronic buying and selling transactions are prone to fraud because sellers often deny it by not sending the goods even though the buyer has already paid. If there is a loss experienced by the buyer, there will be legal consequences in the form of responsibility to the seller for the buyer's losses, both criminal responsibility (imprisonment) and responsibility for fines by the provisions of the ITE Law for problems resulting from online fraud.

4 Conclusion

From the description of the outcomes and discussion above, the judicial consequences of fraud in online purchasing and trades under Indonesian positive law, namely giving rise to accountability for transaction-related consumer losses for consumer losses, require the person whose fault it was to subject the loss, to repay for the loss. The consequences of online buying and selling fraud not only result in legal consequences but also in the realm of civil and criminal law. So, the author recommends that the online buying and selling business can run well if the business actor and consumer are truly honest internet purchasing and selling dealings and must pay attention to, in good faith, the principles of prudence; transparency; accountability; and fairness in running e-commerce transactions, apart from that, in operation internet purchase and trade, the delivery of goods by the trader and the delivery of money by the buyer must have a precautionary principle to anticipate, optimize or suppress the occurrence of elements of fraud. Especially for the public, must have a precautionary principle to look carefully at whether to enter into an online sales agreement through a leading e-commerce company in Indonesia, including Tokopedia, Lazada, Blibli.com, Bukalapak, Zalora, Shopee, Berrybenka, Kaskus and Traveloka, which of course leading online trading

company (e-commerce) or large marketplace in Indonesia which has a neatly structured system to prevent fraud, so it tends to be safer, compared to online buying and selling, be it Facebook, Messenger, Telegram, WhatsApp, Instagram, Twitter, forums which have a very big risk of being prone to fraud because the online buying and selling site is not a leading e-commerce company in Indonesia which of course does not have a neatly structured system to prevent fraud, so it tends not to be very safe against fraud.

References

- [1] A. Muhammad, *Hukum Perjanjian*. Bandung: PT Alumni, 2010.
- [2] B. Harsono, *Hukum Agraria Indonesia*. Jakarta: Djambatan, 2000.
- [3] A. Rubaie, *Hukum Pengadaan Tanah Untuk Kepentingan Umum*. Malang: Bayu Media Publishing, 2007.
- [4] S. Wignjodipuro, *Pengantar dan Asas-asas Hukum Adat*. Jakarta: Gunung Agung, 1982.
- [5] *Kamus Besar Bahasa Indonesia(KBBI)*. Jakarta: Balai Pustaka.
- [6] R. Syafe'i, *Fiqh Muamalah*. Jakarta: Pustaka Setia, 2004.
- [7] H. F. Asnawi, *Transaksi Bisnis E-Commerce Perspektif Islam*. Yogyakarta: Magistra Insania Press bekerjasama dengan MSI UII, 2004, 2004.
- [8] Widodo, *Hukum Pidana di Bidang teknologi Informasi (cybercrime law) : Telaah Teoritik dan Bedah Kampus*. Yogyakarta, 2013.
- [9] A. Ramli, *Cyber Law dan Haki dalam Sistem Hukum Indonesia*. Bandung: Refika Aditama, 2010.
- [10] S. Mertokusumo, *Mengenal Hukum*. Yogyakarta: Liberty, 2005.
- [11] Setiono, *Supremasi Hukum*. Surakarta: UNS, 2004.
- [12] P. M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*. Surabaya: Bina Ilmu, 1987.
- [13] S. Raharjo, *Ilmu Hukum*. Bandung: Citra Aditya, 2014.
- [14] C. S. T. Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*. Jakarta: Balai Pustaka, 1989.
- [15] Muchsin, *Perlindungan dan Kepastian Hukum bagi Investor di Indonesia*. Surakarta: UNS, 2003.
- [16] Setiono, *Rule of Law (Supremasi Hukum)*. Surakarta: UNS, 2004.
- [17] Ishaq, *Dasar-dasar Ilmu Hukum*. Jakarta: Sinar Grafika, 2009.
- [18] Z. Damalik, "Kekuatan Hukum Transaksi JualBeli Secara Online (E-Commerce)," *Univ. Simalungun*, vol. Ringkasan, 2012.
- [19] B. Wahyu Adi Susanto, Heni Hendrawati, "Tinjauan Kriminologi Terhadap Tindak Pidana Penipuan Jual Beli Online," *Varia Justicia*, vol. 13, no. 1, pp. 38–46, 2007.