

A Study of Legal Protection of Consumers in e-Commerce Transactions

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Abstract. Purpose: The study aims to review and revise the legal protection for consumers in e-commerce protection in Indonesia. **Design/methodology/approach:** The study was conducted by using normative researches to examine the provisions of Law Number 8 of 1999 concerning Consumer Protection Act, Law Number 11 of 2008 as amended by Law 19 of 2016 concerning Information and Electronic Transaction Law, Law Number 7 of 2014 concerning Trade regulates electronic system trading and disputes resolution through Online Dispute Resolution (ODR). **Finding:** The result showed that inadequate consumer protection, government regulations legal protection and disputes resolution arrangement. **Implication:** Practically to reviewing legal protection for consumers in e-commerce transaction requires an integrated collaboration between the government, business associations and consumer in Indonesia to realize protection among the parties.

Keywords: e-Commerce, Transactions, Legal Protection, Consumers

1 Introduction

Indonesia is entering the 4.0 generation; e-commerce trading activities have made trade transactions easier. E-commerce or electronic commerce is the distribution, purchase, sale, marketing of goods and/or services through electronic systems such as the internet or television or other computer networks. The internet has contributed significantly to society, companies, industry, and government. The presence of the internet has challenged a company operation's effectiveness and efficiency, especially its role as a means of communication, publication, and a means of obtaining various information needed by a business entity and other forms of business entity or institution [1]. Whereas e-Business, namely the use of information and communication technology by individuals, organizations, or related parties to run and manage main business processes to provide benefits in the form of security, flexibility, integration, optimization, efficiency or improvement, and profit. E-commerce can involve electronic funds transfer, electronic data exchange, automated inventory management systems, and automated data collection systems [2][3].

Based on Bank Indonesia data in September 2020, e-commerce transactions reached IDR 180.74 trillion. The development of e-commerce is very significant, but there has been a substantial increase in consumer complaints. During the 2017-2021 period, there were 595 complaints in the e-commerce sector to BPKN of the Republic of Indonesia [4].

Some of the problems that arise regarding consumer rights in e-commerce transactions include [5]:

- a. Consumers cannot see the goods directly Less clear information about the goods to be purchased.
- b. Unclear status of the legal subject of the business actor;
- c. There is no guarantee of the security and privacy of transactions and explanation of the risks associated with the system used,
- d. especially in the case of electronic payments using credit cards or electronic money
- e. There is still dependence on cash payments
- f. Low consumer confidence and security in conducting online transactions
- g. Not to the maximum support of government regulations
- h. Transactions that are cross-borderless, raise questions about which country's legal jurisdiction should be applied.

1.1 Problem

Based on the above background, it is necessary to ask how legal protection for consumers in e-commerce transactions and dispute settlement?

2 Research Methods

This research method is normative juridical using a statutory approach, conceptual approach, principles, and related theories. This study uses secondary data consisting of primary legal materials using: Civil Code (from now on abbreviated as KUHPPerdata) Law Number 8 of 1999 concerning Consumer Protection, (from now on abbreviated as UUPK/Consumer Protection Act), UU ITE (Information and Electronic Transaction Law) Law Number 11 of 2008 as amended by Law No. 19 of 2016 (from now on abbreviated as UU ITE), Law Number. 7 of 2014 concerning Trade also regulates electronic system trading. Meanwhile, secondary legal materials are carried out by searching libraries through documentary techniques, including archival studies or literature studies such as books, articles, papers, journals, or expert works related to e-commerce. Tertiary legal materials can be found in dictionaries, encyclopedias, materials available on the internet. The data obtained from the literature study is one of the legal material collection techniques that supports the documentary technique. The literature study's function is to obtain legal material and then be analyzed descriptively analytically.

3 Discussion

3.1 Legal Protection for Consumers in e-Commerce Transactions

So far, various studies have been carried out stating that in terms of business law, the problems in e-commerce in Indonesia are inadequate consumer protection, government regulations. Especially the determination of e-commerce taxes, the high cost of using data centers, country code domains or IDs, transactions, internet speed, cybersecurity, and personal data protection. To overcome this problem, the government issued Presidential Regulation Number 74/2017 concerning the Road Map for the Electronic-Based National Trade System (e-Commerce Road Map) for 2017-2019. The contents of this Perpres are based on the consideration of an electronic-based economy that has high economic potential for Indonesia.

It is one of the national economy's backbones and optimizes an electronic-based economy. The Road Map contents include the government seeing the need to accelerate and develop an electronic-based national trading system (e-commerce), start-up businesses, business development, and accelerated logistics. This roadmap includes funding programs, taxation, consumer protection, education, human resources, communication infrastructure, logistics, cybersecurity, and the 2017-2019 SPNBE Roadmap Implementing Management.

Based on the results of a study conducted by APJII (Association of Indonesian Internet Service Providers) with figures from the Central Statistics Agency's (BPS) projection, the Indonesian population in 2019 was 266,911,900 million. From March to 2019, the number of internet users in Indonesia was 196.7 million users or increased to 10.12%. Many internet users in Indonesia have made the e-commerce business or online buying and selling growing. The increasing number of buying and selling online also indirectly affects legal regulation development. The term online contract, which means the same as an electronic contract according to Makarim [6], is a legal bond or relationship that is carried out electronically that combines a network of computer-based information systems with systems. Buying and selling online was born from a sale and purchase contract that occurred electronically between the seller and the buyer. However, until now, electronic buying and selling rules are still not clearly written in Indonesia's applicable law. It is because the terms of the validity of the agreement electronically have not explicitly been regulated. But in principle, the terms of the truth of the deal have been regulated in Article 1320 of the Civil Code, which is a reference in making online contracts that online contract is considered valid and binding on parties. As long as the online contract that is made has fulfilled the 4 valid conditions of the agreement according to Article 1320 of the Civil Code and articles that protect Article 1320 of the Civil Code, namely that in making an agreement, there should be no elements of error, coercion, fraud (Article 1321, Article 1323 and 1328 of the Civil Code), then the online contract is said to be valid. Therefore, in conducting an online sale and purchase agreement, it still refers to the rules regarding buying and selling as stipulated in Article 1457 and Article 1458 of the Civil Code, where one party binds himself to deliver an object, while the other party pays the agreed price. Meanwhile, the seller's obligations in online transactions, according to Gunawan dan Waluyo [7] are:

- a. Submit ownership rights to the goods being traded.
- b. Bear enjoyment and bear hidden disabilities.
- c. Provide information about goods and/or services being sold correctly, honestly, clearly, etc.

Article 7 UUPK also regulates that a seller as a business actor is obliged to provide compensation to the buyer or consumer if the goods received are not following what was agreed. It is done so that the buyer can claim his rights in the event of fraud on the seller's product. The UUPK has regulated the rights and obligations of entrepreneurs to protect consumers. Still, in reality, it has not fully protected consumers in e-commerce transactions because advances have not followed advances in science and technology in the process of producing goods and/or services in existing legal/regulatory instruments. Legal protection arrangements for consumers in e-commerce transactions need to include the following [8]:

- a. Legal protection from business actors' perspective, business actors are obliged to include their identity on the website. With the existence of an online shop validity guarantee agency, there is no guarantee agency for the legality of the shop in Indonesia so that consumers can transact with fictitious online stores. For this reason, the government, through the Ministry of Communication and Information Technology, is preparing a Certification Authority (CA) to guarantee the legality of an online shop in operating by issuing digital certificates.

- b. Consumer protection from the consumer side guarantees the protection of consumer personal data confidentiality because if such data is not kept confidential by business actors, it can be traded by other parties for promotional purposes.
- c. Legal protection for consumers from the product side, where business actors are required to provide clear and complete information about the products offered, product information regarding products must be provided in the language that is easy to understand and does not lead to other interpretations, giving assurance that the products offered are safe or comfortable for consumption or use, as well as providing proof that the products offered are in accordance with what is being promoted by the business actor.
- d. Legal protection for consumers from the transaction side, not all consumers understand how to transact via internet media. In this case, business actors need to clearly and completely include the transaction mechanism and other matters relating to transactions (regulated in the Terms and Conditions). If a dispute occurs between the transacting parties, the paper documents will be submitted as evidence by each party to strengthen their respective positions.

In addition to the UUPK, e-commerce that uses electronic transactions is regulated by the ITE Law Number 11 of 2008 as amended by Law Number 19 of 2016. The Republic of Indonesia Law, Number 7 of 2014 concerning Trade, also regulates electronic system trading. Everyone or business entities that trade goods and/or services must provide complete and correct data and information. E-commerce in this law is regulated in Chapter VII Trading through Electronic Systems in Articles 65 and 66. Every business actor who trades goods and/or services using an electronic system must provide complete and correct data or information. Data or information contains at least: (a). Identity and legality of businessman as an electronic system producer, person or business entity or distribution business actor; (b). Technical requirements of the goods being offered; (c). Technical requirements or qualification of services offered; (d). Prices and payment methods for goods and/or services; (e). Way of delivery of goods. In dispute related to trade transactions through an electronic system, the person/or business entity can resolve the dispute through the court or other dispute resolution.

But in reality, based on the results of the Consumer Empowerment Index (IKK) survey as a measure for the level of consumer courage in 2020, it was 42 points; in 2019, the Indonesian IKK was recorded at 41.7 [9][10]. The Consumer Empowerment Index is the basis for establishing consumer protection policies and measuring consumer awareness and understanding of their rights and obligations and interacting with the market. It means that Indonesian consumers have reached capable levels which previously were only at the level of knowledge about rights and obligations but not entirely willing to fight for them

Legal protection in agreements to avoid misuse of online transactions, online contracts can also be electronic documents that can be used as evidence to prevent misuse by irresponsible people and cause losses. Electronic documents prepared by the parties contain rules and conditions that must be obeyed, including payment terms, period, and delivery method. Often in practice, the seller and buyer do not sign an agreement. Still, the buyer has entered an order for the desired item, and the seller is willing to deliver the goods, so an agreement has been made between the parties to carry out a sale and purchase transaction. These rules and conditions serve as legal protection for both consumers and business actors. This electronic evidence is expressly stated in Article 5 paragraph (1) of Law Number 11 of 2008 as amended by Law No. 19 of 2016 concerning Electronic Transaction Information which states that information, electronic documents, or printouts are valid evidence in accordance with the applicable

procedural law in Indonesia. This provision provides legal certainty for the settlement of electronic transactions in Indonesia.

3.2 Consumer Dispute Resolution in Indonesia

Consumer protection law exists to answer problems between producer and consumer relationships both in a narrow, broad, and comprehensive sense, as well as regulating the parties' rights and obligations, outlining consumer protection principles, the scope of responsibility of producers, and so on. Providing space for dispute resolution in the consumer sector is a good policy in empowering consumers. Efforts to enable consumers are a form of awareness regarding the consumer world's unique characteristics, namely sharp differences in interests between parties with different bargaining positions [11]. Consumers are very vulnerable, so that the state must take its role and protect consumers. As implied in Article 33 of the 1945 Constitution of the Republic of Indonesia Chapter XIV concerning the National Economy and National Welfare that the legal politics of consumer protection in Indonesia is the shared role of consumers and actors. Business, balancing the progress of consumers and business actors, fair efficiency in transactional relationships between consumers and business actors, sustainable development of consumers and business actors, environmental insight in the development of consumers and business actors, as well as the independence of consumers and business actors [7].

3.3 Dispute Resolution Arrangements

In today's perspective, the construction of consumer dispute resolution is known as non-litigation and litigation. The regulation of consumer dispute resolution is regulated in Article 45 (1) UUPK; there are two options that consumers can make, namely through institutions tasked with resolving disputes between consumers and business actors or through courts within the general court. Consumer dispute resolution can be pursued through the court or outside the court based on the disputing parties' voluntary choice (Article 45 paragraph 2). This consumer dispute resolution does not rule out the possibility of peaceful settlement by the disputing parties without going through a court. Out-of-court dispute resolution as regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution can be pursued with various alternatives, namely mediation, conciliation, and arbitration, where the UUPK method for resolving this dispute is borne by BPSK (Consumer Dispute Settlement Body). Meanwhile, settlement of disputes outside the court, as referred to in Article 45 paragraph 2 does not eliminate criminal responsibility as regulated in this law (Article 45 paragraph 3). Meanwhile, suppose an effort to settle consumer disputes outside the court has been selected. In that case, the lawsuit through the court can only be pursued if the action is declared unsuccessful by one of the parties or by the disputing parties. (Article 45 paragraph 4) UUPK.

According to Article 46 of the Company Law, parties that file a lawsuit for violations of business actors can be carried out by:

- a. A consumer who is injured or the heir concerned.
- b. Groups of consumers who have the same interests.
- c. Non-Governmental Organization for Consumer Protection (LPKSM) that meets the requirements, namely in the form of a legal entity or foundation.

3.4 Litigation Dispute Resolution

Article 48 of the UUPK states that the settlement of consumer disputes through the judiciary refers to the provisions concerning general courts that apply with due observance of the provisions in Article 45 above. Article 45 (4) states that the settlement of consumer disputes through the courts is only possible if: (a) The parties have not chosen efforts to settle consumer disputes outside the court; (b) Efforts to resolve consumer disputes outside the court are declared unsuccessful by one of the parties or by the disputing parties.

Settlement of disputes that arise in the business world is a challenge for business actors, especially if the process being pursued is in the form of settlement in court. Because the judicial process is usually very long and costly, it will end in the defeat of one party and the victory of the other [12].

Evidence in resolving consumer disputes in the form of goods and/or services, statements from the disputing parties, testimony from witnesses and/or expert statements, letters and/or documents as well as other supporting evidence. Proof, in this case, is the burden and responsibility of the business actor.

3.5 Dispute Resolution through Online Dispute Resolution (ODR)

ODR (Online Dispute Resolution) is a dispute resolution that combines information processing computer technology with internet communication network facilities [13][14]. ODR (Online Dispute Resolution) provides convenience in resolving disputes that occur. ODR was born from the synergy between ADR (Alternative Dispute Resolution) and Information and Communication Technology (ICT) as a method or step to resolve disputes that arise in online processes where traditional settlement is very ineffective and impossible [14].

The disputing parties' framework in the ODR includes: (1) They were disputing parties (2) Facilitator and ICT (Information and Communication Technology) Assistance. Judging from the type of dispute settlement, it only focuses on the peaceful settlement of commercial law (Trade), with jurisdiction covering the authority to handle commercial law cases whose results can be in the form of a win-win solution or win-lose solution from the e-adjudication process (Online Arbitration). E-commerce transactions drive the emergence of ODR and can be used as an online transaction dispute resolution mechanism. In general, the ODR (Online Dispute Resolution) has four components, namely:

- a. Like ADR, both parties to a dispute must agree to resolve their case out of court; the difference is using the internet in the settlement process.
- b. Professional guides direct parties to carry out the ADR process using the internet.
- c. The arrangements regarding ADR apply to the implementation of settlement via the internet.
- d. The software can be used to exchange information on the internet (Meet Online, Access Database, Send-Document, and Hold Meetings with Voice and Video Conference).

4 Conclusion

Reviewing legal protection for consumers in e-commerce transactions requires an integrated collaboration between the government, business associations, and consumers in Indonesia to realize protection among the parties to achieve a win-win solution. It is necessary to immediately revise the Consumer Protection Law Number 8 of 1999 so that consumer

disputes through the Online Dispute Resolution are presently regulated in a regulation that is also part of efforts to resolve consumer disputes to protect their rights.

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