

Legal Protection in Trade Transactions Through The Electronic System in Indonesia

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Abstract. Technological advances and developments globally have brought changes in the procedures for trade transactions. Initially, trading transactions were conventional, but now they have changed through an electronic system. Many people take advantage of trading transactions through electronic systems. The methodology utilized is the legal methodology and the applied methodology. The optional examination information sources utilized comprised of essential, auxiliary, and tertiary legitimate materials. Information assortment procedures in this exploration are writing study and report study. The arrangement is through a consumer protection law update. The law that is aspired to is a law that is responsive and adaptive, which can adapt to technological advances, to be able to protect consumers in trade transactions through electronic systems, and can guarantee legal certainty.

Keywords: Protection; Consumers; Transactions; Electronic Commerce

1. Preface

Technological advances and developments have made the world in the palm of your hand and without boundaries. Almost all areas of life today cannot be separated from the use of technology. One of them is trading, which was originally conventional by face-to-face between sellers and buyers, now switching to using communication technology in the form of the internet in carrying out businesses selling products of human needs, both primary, secondary, and tertiary needs, known as e-commerce or online trading. E-commerce includes buying and selling goods that are not physical, such as products of technological modernization and a variety of services.

E-commerce in terms of Indonesian legislation is called trading through electronic systems or hereinafter referred to as PMSE as referred to in Article 1 point 1 of Law Number 7 of 2014 concerning Trade, that "Trading through Electronic Systems is Trade in which transactions are carried out through a series of devices and electronic procedure".[1] Similar provisions are stated in Article 1 Number 2 of Government Regulation Number 80 of 2019 concerning Trading Through Electronic Systems, which formulates: "Trading Through Electronic Systems, hereinafter referred to as PMSE, is trading in which transactions are carried out through a series of electronic devices and procedures".[2] This arrangement has the intending that in exchanging or trading exercises the exchanges are completed electronically. While what is implied by electronic exchanges as per Regulation Number 11 of 2008 concerning Data and Exchanges are lawful demonstrations completed utilizing PCs and additionally other electronic media. [3]

The presence of PMSE certainly greatly facilitates the public as consumers if they want to shop online. Consumers only need a computer or smartphone connected to the internet. The parties involved in PMSE include PMSE business actors, traders (merchants), and PMSE organizers.

One form of PMSE that is known in Indonesia is a marketplace, which is a platform that facilitates sellers and buyers in many ways. In simple terms, a marketplace is a large marketplace where sellers gather or accommodate sellers to market their products to consumers, where the marketplace has a website that is responsible for all transactions including ordering, payment, and shipping goods to consumers. Examples of marketplaces that operate internationally are Amazon, Rakuten, and eBay. Examples of marketplaces in Indonesia are Tokopedia, Shopee, Bukalapak, Lazada, Blibli, Bhinneka, Orami, Ralali, Zalora, Sociolla, and so on.

Whereas online shops that are self-managed by individuals usually use a social media base to market them such as Facebook, Instagram, or other similar social media that can be used to market a product produced by an individual or home industry.

In light of information, the development in the worth of online business in Indonesia has arrived at 78%, the most elevated on the planet, and is positioned first. Besides, it is in second situation with 59 development in esteem. [4] However, along with the journey and progress that has been achieved by trading through electronic systems in Indonesia, various problems have also arisen, especially issues related to consumer protection.

Based on data from the National Consumer Protection Agency, complaints about e-commerce are in second place after complaints about financial services problems over the last 5 years from 2017 – 2022. The number of e-commerce complaints from 2017 – 2022 is approximately 1500 complaints out of a total of 8229 complaints. These complaints come from people who are e-commerce consumers with a variety of problems they experience including the problem of fraud buying and selling online.

From the complaint data above, it is important to protect consumers in PMSE, because there are differences between conventional transaction processes which generally involve two parties, namely business actors, and consumers only. Whereas in PMSE, many parties are involved in the transaction process, such as business actors, traders (merchants), PMSE organizers, electronic payment providers, delivery services, and consumers. Because many parties are involved in PMSE, it can cause difficulties when problems occur where consumers have been harmed, which party must be held accountable.

Until now consumers are in a position of weak bargaining power, because they cannot demand more. Moreover, complaints can only be made online and are one-way in nature, consumers can only wait for an answer with an uncertain timeframe. In addition, consumers cannot convey their concerns directly to the entrepreneur's office.

In addition, some PMSE business actors operating in Indonesia have their offices located abroad, such as in Singapore. Offices in Indonesia only have branch office status. Things like this show the vulnerability of consumer legal protection in PMSE. So far, many PMSE consumers in Indonesia do not know their rights when they suffer losses, whether caused by PMSE business actors or PMSE traders or organizers.

The most core and important issue is that the current law (*ius constitutum*) that regulates consumer protection is Law Number 8 of 1999 concerning Consumer Protection, which is over 23 years old or can be said to be outdated. This is because it does not regulate consumer protection in the PMSE regime. In addition, PMSE that is currently happening has crossed borders between countries in the world, so legal issues arising from electronic transactions in

PMSE activities which have now become part of national and international trade are becoming increasingly widespread.

In connection with the above, the desired law (*ius constituendum*) is a law that can fairly protect consumers and provide legal certainty. In addition, some laws are effectively enforced, which will protect consumers from any harm from abusive practices in PMSE. This is intended to build consumer confidence in fair trade practices in PMSE.

2. Methodology

The type of research used is normative legal analysis. The approach used is the statutory and conceptual approach. The legal approach is conducted by examining the norms in the law or regulations related to the legal topic to be studied.[5] Meanwhile, the conceptual approach is based on the absence or presence of legal regulations governing the topic under study but refers to existing legal provisions.[5]

3. Result and Discussion

The occurrence of various problems that arise in PMSE transactions as stated in several opinions above, since the implementation of PMSE in Indonesia for more than a decade, and now one of them is Law Number 8 of 1999 concerning Consumer Protection has not regulated consumer protection in PMSE transactions. Consumer protection regulations in this law are more aimed at buying and selling goods/services conventionally or offline in the context of face-to-face buying and selling between business actors and consumers.

The emergence and development of PMSE in Indonesia has been since the 2010s, while the Consumer Protection Act has been in force since 1999, so it has not been able to fully protect consumers when consumers experience problems in PMSE transactions. Until 2022, there is no specific law governing consumer protection in PMSE transactions.

As for the provisions in Law Number 11 of 2008 concerning Information and Electronic Transactions, they are more technical in nature in terms of the arrangements for implementing information technology (IT). Only a few articles related to consumer protection. However, this ITE Law has become a temporary legal umbrella regarding consumer protection in PMSE transactions, although this law does not specifically regulate consumer protection in PMSE. There is only one article related to consumer protection, namely Article 9 of the ITE Law. Likewise, in Law Number 7 of 2014 concerning Trade, there are only 2 articles, namely Article 65 and Article 66, which are regulated more from the business actor's point of view in PMSE only, but are not regulated from the consumer's point of view.

From the description above, the state is obliged to protect its citizens as consumers which is implemented through laws and regulations as the embodiment of a rule of law state. Indonesia as a constitutional state is responsible for protecting citizens from injustice and legal certainty. In a rule-of-law state, the rule of law is based on the certainty of equality before the law which means that all are subject to the law, and all enjoy the same legal protection.

In a vote based law and order, buyer security is the right of each and every resident which is the obligation of the state, particularly the state to its residents. Assurance of buyers implies defending the freedoms and interests of purchasers. It incorporates all state activities pointed toward safeguarding the privileges and interests of customers. As stated in Article 28I of the

1945 Constitution, "Protection, promotion, enforcement, and fulfillment of human rights is the responsibility of the state, especially the government".

As to's freedoms, the state has an exceptional obligation to guarantee that its residents as a general public can partake in their privileges. For this situation, the state is expected to lay out and keep up with regulations and administrations that empower individuals to partake in a daily existence where their privileges are regarded and safeguarded.

As it is known that the Consumer Protection Act is legislation that existed long before information and communication technology (ICT) developed rapidly and its acceleration required a law that was able to keep up. Currently in the digital era, when online trading activities are a necessity and a reality that lives in society, the Consumer Protection Act still has many deficiencies that must be perfected through legal reform.

Simultaneously with the development of electronic commerce in the digital era, there have also been dynamic human changes, so the law must also change. When dealing with changing humans, the law cannot be static. This is intended so that consumer protection laws are not far behind compared to other countries in practice.

Based on this, it is necessary to construct a consumer protection law that is more responsive and adaptive, intelligent, open, has a global outlook, has integrity, has character and adheres to values that depart from something that lives and is practiced, and can adapt to progress and development of information and communication technology in trade transactions through electronic systems, to guarantee fairness and legal certainty for both consumers and business actors.

In Nonet's and Selznick's view, responsive law is leaving the old paradigm and the law is preparing to adopt a new paradigm. That is, law with other entities must be able to interact where the interests that exist in society are adopted as goals. The existence of pluralistic, discourse and dialogue space is openness in responsive law. Responsive law tries to try to see from various perspectives a problem, not just always on juridical considerations in its considerations.[6] According to Mochtar Kusumaatmadja, the realization of social justice for all Indonesian people will be achieved as a legal goal because it has the power by law to protect and protect all levels of society.[7] It is by the purpose and nature of the law to protect the community.

The law is a consumer protection law which is a whole of rules and principles that are governing and protect consumers.[8] Through this law, the Indonesian government regulates consumer rights that must be protected. Universally, consumer protection law is a respect for consumer rights and is not anti-producers. [9]

The purpose of the law is to realize justice, benefit, and legal certainty. [9] Regarding justice, Adam Smith put forward the teachings of justice by stating 'the end of the justice to secure from the injury'. [10]

In essence, the law is intangible, but in its embodiment, it can be tangible. Reduced suffering, greatest happiness, and goodness are the results of evaluating a good legal provision [9]. Thus, consumer protection law is the whole of the rules and principles that organize and protect consumers in people's lives in the relations and availability and use of consumer products between producers and consumers.[9] Strictly speaking, the consumer protection law is the entirety of laws and regulations, both laws and other laws and regulations, as well as decisions of judges whose substance regulates the interests of consumers.[11]

It is through the existence of consumer protection laws that it is aimed at protecting consumers from various unhealthy trading practices. The desired consumer protection law reform aims to avoid exploitation and various malpractices in PMSE.

Updates to the Consumer Protection Act include:

1. The role of third parties
The need for regulation of the role of third parties (intermediary parties) such as marketplaces which act as a liaison between sellers and consumers in the event of a dispute.
2. Compensation
The compensation provisions that have been regulated in Article 19 paragraph (3) of Law Number 8 of 1999 are very detrimental to consumers who provide a time limit of 7 (seven) days after the transaction. There is no explanation for the transaction date terminology. What does it mean since the receipt of the goods, or since payment has been received by the business actor, or since the consumer and the business actor have bound themselves by agreeing to the terms proffered by the business actor, or since "Click OK" online?
3. Exchange of goods
The need for provisions regarding the exchange of goods that do not meet the specifications sent due to the negligence of business actors, where the shipping fee is not borne by the consumer at the time of delivery of the exchanged goods, because it is not the consumer's fault.
4. Easy refund (fund)
The need for provisions governing the ease of returning consumer money (funds) in the form of a digital balance when canceling a purchase, but the money has already been sent. Here, the money (funds) must be immediately returned to the consumer's digital balance.
5. Protection of consumer personal data
The need for provisions governing the protection of consumer personal data, because Law Number 8 of 1999 concerning Consumer Protection has not yet been regulated.
6. Choice of law and choice of forum
The need for regulation regarding legal choices and forum choices that have not been regulated in the current Consumer Protection Act.
7. Dualism of complaint institutions
The dualism of complaint institutions is very clear, namely the National Consumer Protection Agency (BPKN) which is the implementation of the mandate of the Consumer Protection Act, and the Directorate General of Consumer Protection and Commerce of the Ministry of Trade. There is a dualism of institutional complaints that makes consumers confused about where to complain.

In addition to legal renewal is harmonization or synchronization with other legislation. As it is known that there are laws and regulations related to PMSE, but until now there has been no one that specifically regulates (*lex specialis*) regarding consumer protection in PMSE.

4. Conclusion

The problems that arise in PMSE are because the current Consumer Protection Law does not cover consumer protection in PMSE transactions. Therefore, it is necessary to reform consumer protection laws by complementing existing provisions covering consumer protection in PMSE transactions clearly and firmly based on the principle of balance between consumers and business actors.

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