Legal Protection and Settlement of Electronic Buying and Selling Transaction Disputes Regarding Goods Not Conforming to Orders

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Abstract

Online buying and selling transactions, which are a development of buying and selling activities, are a form of binding agreement for both parties, but are carried out using internet facilities and are carried out without any direct interaction from both parties. This research aims to examine and analyze the law regarding a problem in society regarding online buying and selling transactions that result in goods not being ordered. The research method used in this research is a qualitative juridical method in which an existing problem is analyzed using legal source materials. The results and conclusions in this research are that the development of e-commerce in Indonesia is regulated in Law no. 11 of 2008 concerning Information and Electronic Transactions, and Law Number. 8 of 1999 concerning Consumer Protection regulates consumer protection, and forms of resolution of problems regarding online buying and selling can be resolved through court or outside court such as mediation and arbitration.

1. Introduction

With the development of society and technology, there have been changes in the lifestyle and behavior of people in the world, where initially sales and purchase agreements were in conventional form (written and verbal) have now experienced developments with the emergence of electronic agreements or contracts. However, with the emergence of the development of electronic agreements or contracts, what was originally a face-to-face (conventional) sales and purchase agreement has now been replaced by an online sales and purchase agreement, in this case the online sales and purchase agreement is not carried out directly but via online media without a face-to-face meeting. directly, then by changing the buying and selling transaction process, the risk of legal problems will increase, for example the risk of fraud, default, mistakes or misguidance in online buying and selling transactions.

The increasingly advanced development of the internet is one of the driving factors for the development of e-commerce. The development of e-commerce is regulated in Law no. 11 of 2008 concerning Information and Electronic Transactions, abbreviated as UU ITE. As consumers, we must be careful when buying goods. Usually in an e-commerce buying and selling transaction there is an agreement between the business actor and the consumer. Buying and selling is one type of agreement regulated in the Civil Code, while e-commerce is basically a modern buying and selling transaction model which implies technological innovation such as the internet as a transaction medium. The will of the parties expressed in an agreement is the basis for binding an agreement. This will can be expressed in various ways, both verbally and in writing, and binds the parties with all legal consequences.[1]

In this case, the internet becomes a forum for online buying and selling to sell various types of goods that are bought and sold. The internet is a medium or intermediary for changing communication, entertainment and commerce systems. People generally use the internet for long distance communication with various features that greatly simplify all human activities.[2]

Buying and selling is an activity of exchanging goods for other goods using certain procedures. Included in this are services and also the use of means of exchange such as money. Buying and selling itself is the exchange of goods for goods for money by releasing property rights from one to another on the basis of mutual consent.[3]

Goods that do not match orders in online buying and selling transactions can actually be seen as a form of default, however there is no clear legal basis underlying the term "default". In online transactions, the debtor (seller) and creditor (buyer) bind themselves to each other based on an agreement (sale-

[1] Suharnoko, Hukum Perjanjian: Teori dan Analisa Kasus, Jakarta: Kencana, 2004, hlm 30.
[2] Budi Soetedjo Dharma, Perencanaan dan pembangunan sistem Informasi, Yogyakarta: Andi Press, 2002, hlm. 2
[3] Enang Hidayat. Fiqih Jual Beli. Bandung: PT. Remaja Rosdakarya, 2015, hlm. 9.

purchase) thereby creating a legal relationship between the seller and the buyer which is binding for both, and goods that do not match the order violate the agreement (sale- purchase), in the form of an act of "Performance carried out is not perfect", so that the creditor (buyer) can request fulfillment of the performance according to the agreement (goods that are in accordance with the order (buyer).[4]

Whether they realize it or not, there are many complaints from online buying and selling customers from Market Place Shopee. Most of them feel disadvantaged because the goods did not arrive according to expectations (orders). For example, the size of the clothes he ordered was L, but the clothes that came were XXL, which automatically didn't match his body size, in other words, they were too big. Then quite a few of them also feel more disadvantaged when goods that do not meet expectations cannot be exchanged, in other words the seller is irresponsible. Moreover, there are still many testimonials given by consumers on the Shopee application who feel disadvantaged by this.[5]

An example of a case where a consumer is shopping online but the order does not match what is available in society is someone named Elok. It's good to buy electronic cigarettes in an online shop but the order doesn't match. Order number: 220203H93R8BCX, application number: 220211180425304, report code: 1490516717144752194, for reasons 1. The goods sent did not match what I ordered. My order: a. Our Voopoo Vinci mod pod is 100% authentic, 3 pcs. b. 2 pcs Authentic Smok RPM40 Starterkit Mod.2. The quality of the goods sent is not authentic, does not match the description in the seller's window. Meanwhile, 5 clone/fake/not authentic Voopoo Vinci Pods were sent. 3. The seller did not respond at all regarding my complaint. Chat was not answered regarding my complaint.[6]

Based on the case above, the legal fact was found that online buying and selling agreements are prone to fraud, of course this happens because online buying and selling agreement activities do not involve face-to-face meetings and sometimes the parties do not know each other, so this is prone to fraud, If you look at the case example above, it is subject to Article 1320 BW, namely the conditions for the validity of an agreement, namely agreement, skill, a certain subject matter, and a cause that is not prohibited. So, by complying with Article 1320 BW, if one of the parties violates it, there will certainly be legal consequences, namely that the agreement can be requested to be annulled and null and void by law, apart from the civil law consequences above, it also has an impact on the criminal law

[4] Andhika Mediantara Primayoga, Hendro Saptono, & Rinitami Njatrijani, Perlindungan Hukum Terhadap Konsumen Yang Menerima Barang Tidak Sesuai Pesanan Dalam Transaksi Jual Beli Online. *Diponegoro Law Journal*, 2019, 8(3), hlm. 1739.
[5] Widi Nugrahaningsih, Mira Erlinawati, Perlindungan Konsumen Dalam Transaksi Online, Surakarta: CV Pustaka Bengawan, 2017, hlm 32-34.
[6] Media Konsumen, "Klaim Pesanan di Shopee Atas Barang Palsu dan Tidak sesuai Pesanan, website: https://mediakonsumen.com/2022/02/13/surat-pembaca/klaim-pesanan-di-shopee-atas-barang-palsu-dan-tidak-sesuai-pesanan. Diakses tanggal 28 Desember 2023 pukul 12.00 WIB.

consequences of fraud and the ITE Law which applies positively in Indonesia.

In online buying and selling, people can make online sales agreements through leading e-commerce companies in Indonesia, including Tokopedia, Lazada, Blibli.com, Bukalapak, Zalora, Shopee, Berrybenka, Kaskus and Traveloka, which are of course leading online trading companies (e-commerce) or large marketplaces in Indonesia which have a neatly structured system to prevent fraud, so they tend to be safer, compared to online buying and selling, whether Facebook, Messenger, Telegram, WhatsApp, Instagram, Twitter, forums, which of course has a very big risk of being vulnerable. fraud because the online buying and selling site is not a leading e-commerce company in Indonesia.

As is known, the legal regulations that regulate the issue of fraud in online buying and selling agreements in Indonesian positive law are both the regulations regarding electronic transactions as regulated in Law no. 11 of 2008 concerning Information and Electronic Transactions and Law no. 19 of 2016 concerning Amendments to Law no. 11 of 2008 concerning Information and Electronic Transactions as the main basis for regulating online buying and selling, Government Regulation of the Republic of Indonesia Number 71 of 2019 concerning Implementation of Electronic Systems and Transactions. However, with the existence of these legal regulations, the fact is that society is still prone to fraud in online buying and selling. This is because law enforcement has not been able to properly implement these legal regulations to anticipate, optimize or suppress the occurrence of legal problems that often occur in online buying and selling, namely the problem of fraud in online buying and selling which is still prone to fraud.

The problems above show that in several respects, transactions in e-commerce are very risky, full of risks, especially because the consumer has the obligation to make payment first (advance payment) while he cannot see the truth of the goods ordered or their quality. Payments made electronically, either through bank transfers or by filling in credit card numbers on the internet, open up opportunities for civil and criminal fraud, while there is no exact guarantee that the goods ordered have been delivered as ordered.

Based on the background explanation above, the researcher wants to conduct research which aims to examine juridically the online buying and selling of goods carried out by the public, but the goods purchased do not match those in the online shop. Therefore, researchers conducted this research entitled "**Legal Protection of Consumers and Settlement of Disputes on Electronic Buying and Selling Transactions Regarding Goods Not Conforming to Orders**".

2. Research Method

This research is normative legal research. Legal research is a process of discovering legal rules, legal principles and legal doctrines to answer the legal issues faced. The approach used in this research is a legislative approach, a theoretical approach. The legal materials used in this research are primary legal

materials, secondary legal materials, and tertiary legal materials. In this research, the type of writing research is normative juridical. Legal material collection techniques The data collection procedure used in this research is literature study, namely collecting data by reading statutory regulations, official documents and literature that is closely related to the problems discussed based on secondary data. This data was then analyzed and formulated as supporting data in this research.

3. Results and Discussion

Juridical Review of Online Buying and Selling Transactions

If we buy an item on the website or application, an electronic transaction process occurs. Article 1 Paragraph (2) of the ITE Law explains "Electronic Transactions are legal acts carried out using computers, computer networks and/or other electronic media". The legal act referred to in this case is a sale and purchase agreement. Because the sale and purchase agreement is carried out online, the rules that are also used in this case are Law Number 19 of 2016 concerning Electronic Information and Transactions and Government Regulation Number 82 of 2012 concerning Electronic System and Transaction Operators.[7]

Buying and selling transactions, even though they are carried out online, are still recognized as electronic transactions that can be accounted for under the ITE Law and PP PSTE. According to Article 48 paragraph (3) of PP PSTE, the Electronic Contract itself must at least contain the following matters; identity data of the parties; objects and specifications; Electronic Transaction requirements; prices and costs; procedures in the event of cancellation by the parties; provisions that give the injured party the right to return the goods and/or request a product replacement if there are hidden defects; and legal options for electronic transaction settlement.[8]

In online buying and selling, an agreement is very important because it does not involve face-to-face meetings, so arrangements are needed regarding when the agreement occurs. There are four theories when an agreement occurs, namely; utterance theory (uithingsthorie), delivery theory (verzendtheorie), knowledge theory (vernemingstheorie), and reception theory (ontvangstheorie). Electronic agreements or contracts in Indonesia are regulated through Law Number 11 of 2008 concerning Electronic Information and Transactions. Even though online sales and purchase agreements are a new phenomenon, all countries apply existing contract law regulations by applying universal principles regarding making an agreement such as the consensual principle, the principle of freedom of contract, the principle of good faith and the conditions for the validity of an agreement. In Indonesia, the conditions for the validity of online sales and purchase agreements

[7] Komang Frisma Indra Prastya, Ni Ketut Sari Adnyani, Si Ngurah Ardhya. Tinjauan Yuridis Tentang Pelaksanaan Perjanjian Jual Beli Online Melalui E-Commerce Menurut Pasal 1320 Kuhperdata Dan Undang-Undang Nomer 19 Tahun 2016 Tentang Informasi Dan Transaksi Elektronik. *Jurnal Komunitas Yustisia*, 2021, 4(2), hlm 621.
[8] Cindy Aulia Khotimah, & Jeumpa Crisan Chairunnisa. Perlindungan Hukum Bagi Konsumen Dalam Transaksi Jual Beli-Online (E-Commerce). *Business Law Review*, 2016, *1*, hlm. 16.

still apply Article 1320 of the Civil Code. The second requirement in article 1320 of the Civil Code is that the ability to make an agreement must be legally competent.[9]

If the first element (agreement) and the second element (skill) are not fulfilled, then the contract can be canceled. Meanwhile, if the third element (a certain thing) and the fourth element (a lawful cause) are not fulfilled, then the contract is null and void.[10]

A sale and purchase is deemed to have occurred between the two parties if an agreement has been reached regarding an item to be purchased and the price of the item. Even though the goods have not been delivered and the price has not been paid. That means, with an agreement or agreement between the two parties, both parties are bound to each other to carry out what has been agreed. If one of the parties tries to break the promise of the agreement, they can sue the party who broke the agreement. And it is not permissible to cancel the sale and purchase agreement unilaterally because you can be sued for compensation.[11]

In Islam, doing business online is permitted as long as there are no elements of usury, injustice, monopoly and fraud. The dangers of usury are found in the Koran, including in (Q.S. Al-Baqarah [2]: 275, 279 and 278, Q.S. Ar-Rum [30]: 39, Q.S. An-Nisa' [4]: 131). Rasulullah S.A.W. implies that buying and selling is halal as long as it is mutually agreeable (Antarādhin). Because buying and selling or doing business online has a positive impact because it is considered practical, fast and easy.[12]

Legal Protection for Sellers and Buyers (Consumers) in Online Buying and Selling

Legal protection is an illustration of the working of the legal function to realize legal objectives, namely justice, benefit and legal certainty. There are two forms of legal protection, namely preventive which means prevention and repressive which means resolution. Preventive legal protection in terms of the inclusion of standard clauses by business actors functions to prevent consumers who are in a weak position from being harmed by clauses included by business actors. While repressive legal protection is legal protection for consumers in terms of resolving disputes related to the inclusion of standard clauses included by business actors, in online buying and selling transactions the inclusion of standard clauses is something that is very often done by business actors in order to minimize the risks or losses that will be borne if they occur. something about the goods and services that have been offered.[13]

[9] Syamsir Hasibuan, & Nika Rahmania. Tinjauan Yuridis Wanprestasi Atas Perjanjian Jual Beli Online. *Jurnal Dimensi*, 2020, *9*(1), hlm 89.
[10] Tira Nur Fitria. Bisnis jual beli online (online shop) dalam Hukum Islam dan Hukum Negara. *Jurnal Ilmiah Ekonomi Islam*, 2017, *3*(1), hlm. 58.
[11] Fajarwati Kusuma Adi. Perspektif Jual Beli Online dalam Perspektif Hukum Islam dan KUHPerdata. *Lisyabab: Jurnal Studi Islam Dan Sosial*, 2021, *2*(1), hlm. 100.
[12] Meida Lutfi Samawi. Tinjauan hukum islam mengenai jual beli online. *Ad-Deenar: Jurnal Ekonomi Dan Bisnis Islam*, 2020, *4*(1), hlm. 55.
[13] Futri Wisma Hayati, M. Hosen, and Lili Naili Hidayah. Perlindungan hukum terhadap konsumen pada situs belanja online

Legal protection for sellers and buyers is regulated in the UUPK, namely in Article 4 regarding consumer rights, including obtaining goods according to exchange value and conditions as well as guarantees, obtaining information about goods, and receiving compensation. The legal protection that Kaskus can provide if problems arise related to the use of rekber services in buying and selling transactions is to block accounts that are proven to be in default.[14]

Legal protection for the community is contained in Article 46 of Law no. 11 of 2008 concerning Information and Electronic Transactions and Article 62 of Law Number 8 of 1999 concerning Consumer Protection. Legal protection for consumers in electronic buying and selling transactions in Indonesia is strictly regulated from both a criminal and civil perspective.[15] Forms of legal protection for buyers in online buying and selling disputes are regulated in B.W.jo Law No. 11 of 2008 jo. PP No. 82 of 2012 jo. B.W. Law No. 8 of 1999 regulates default (Article 1243 B.W.) Law No. 11 of 2008 regulates electronic documents as evidence (Article 5 of the ITE Law). PP No. 82 of 2012 regulates the validity of electronic contracts (Article 47 of PP No. 82 of 2012).[16]

Institutions and Legal Protection for Consumers in E-Commerce Transactions at the National level, Indonesia has regulations that provide protection for intellectual property rights such as Copyright, Patents and Trademarks, including passing the Law on Consumer Protection. At the national level, efforts to provide protection to consumers are expressed in the enactment of Law Number. 8 of 1999 concerning Consumer Protection. For the need to protect consumers, especially consumers who carry out business transactions using electronic technology (e-commerce), the urgency to create legislation that regulates this matter is very high. This is because existing laws and regulations, especially laws governing consumer protection, have not accommodated these needs.[17]

In the agreement there is an electronic document, usually the document is made by the merchant which contains rules and conditions that the customer must comply with but the contents do not burden the customer. These rules and conditions are also used as legal protection for both parties. The legal protection for both parties is that legal protection for merchants is especially emphasized in terms of payment. Merchants require customers to make payment in full and then confirm payment, only after that the ordered goods will be delivered. Legal protection for customers lies in the guarantee in the form of a return. or exchange of goods if the goods received do not match what was ordered, and the privacy of

shopee ditinjau Dari perundang-undangan. *Zaaken: Journal of Civil and Business Law*, 2020, *1*(1), hlm, 82.

[14] Novianto Languyu. Kedudukan Hukum Penjual dan Pembeli dalam Bisnis Jual Beli Online. *Lex et Societatis*, 2015, *3*(9), hlm 99.

[15] Suwari Akhmaddhian, Asri Agustiwi. Perlindungan Hukum Terhadap Konsumen Dalam Transaksi Jual Beli Secara Elektronik Di Indonesia. *UNIFIKASI: Jurnal Ilmu Hukum*, 2016, 3(2), hlm. 40.

[16] Aditya Ayu Hakiki, Asri Wijayanti, dan Rizania Kharismasari. Perlindungan hukum bagi pembeli dalam sengketa jual beli online. *Justitia Jurnal Hukum*, 2017, *1*(1). hlm, 128.

[17] Yudha Sri Wulandari. Perlindungan Hukum bagi Konsumen terhadap Transaksi Jual Beli E-Commerce. AJUDIKASI: Jurnal Ilmu Hukum, 2018, 2(2), hlm, 206.

electronic media users' personal data must be legally protected. Providing information must be accompanied by the consent of the owner of the personal data.[18]

Apart from that, if the discussion is about e-commerce transactions, the aspect of consumer protection in the use of electronic signatures must be taken into account because the purpose of signing a document is to ensure the authenticity of the document. Electronic signatures are different from commonly known signatures. Electronic signatures use other methods to mark documents so that documents or data not only provide identification to the sender, but also provide assurance that the integrity of the document has not been changed during transmission. Electronic signatures are based on the contents of the message. There are two parties to the use of digital (electronic) signatures, namely: Certificate Authority (CA), and Subscriber. The correlation between the Certification Authority (CA) as the service provider and the subscriber as the customer is based on protecting the subscriber's rights.[19]

Settlement of Online Buying and Selling Disputes If the Goods Are Not Appropriate

Legal remedies that can be taken by consumers who feel they have been harmed by the perpetrator must be regulated in Article 45 Paragraph (1) of the Consumer Protection Law Number 8 of 1999 which stipulates that every consumer who is harmed can sue the business actor through a consumer dispute resolution institution and/or to court. public to obtain legal remedies for their complaints. This law was enacted in response to the concerns of a number of consumers. There are two types of dispute resolution, namely litigation (court) and non-litigation.[20]

The methods used to resolve consumer disputes outside of court are conciliation, mediation or arbitration based on the choice of the disputing parties. Conciliation is a process of resolving disputes between the parties by involving a neutral and impartial third party. Meanwhile, mediation is a process of negotiating dispute resolution or problem solving in which an impartial third party collaborates with the disputing parties to help obtain a satisfactory agreement. The meaning of arbitration and alternative dispute resolution is a method of resolving a civil dispute outside of court, which is based on an arbitration agreement made in writing by the parties to the dispute.[21]

Law Number 8 of 1999 concerning Consumer Protection provides an alternative resolution through a body outside the judicial system called the

[18] Setia Putra. Perlindungan Hukum Terhadap Konsumen Dalam Transaksi Jual-Beli Melalui E-Commerce. *Jurnal Ilmu Hukum*, 2014, 5(2), hlm. 299.
[19] Alexandra Exelsia Saragih, & Muhammad Fadhil Bagaskara. Perlindungan Hukum Terhadap Konsumen Dalam Transaksi E-Commerce. *Civilia: Jurnal Kajian Hukum dan Pendidikan Kewarganegaraan*, 2023, *2*(2), hlm, 152.
[20] Rahadian Irhamil Haqqi Al Irsyad & Anang Dony Irawan, (2022). Perlindungan Hukum Bagi Konsumen Jual Beli Online Atas Barang Tidak Sesuai. Jurnal Education and Development, 10(3), hlm 266.
[21] Chikie Nangin. Perlindungan Hukum Terhadap Konsumen Yang Mengalami Kerugian Akibat Pengiriman Barang Oleh Perusahaan Ekpedisi Menurut UU Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen. *Lex Crimen*, 2017, 6(4), hlm, 68.

Consumer Dispute Resolution Agency (BPSK), apart from the District Court whose jurisdiction includes the consumer's domicile. There are several provisions regulated in Chapter However, the results of the BPSK decision have sufficient legal force to provide a warning to naughty business actors because the decision can be used as evidence for investigators. Apart from these duties, BPSK is tasked with imposing administrative sanctions on business actors who violate certain prohibitions imposed on business actors and BPSK also in deciding on the implementation or implementation of its execution must request a decision from the Court.[22]

Consumer dispute resolution can be resolved through the Consumer Dispute Resolution Agency (BPSK) or court. BPSK has the authority to impose administrative sanctions in the form of determining compensation of IDR 200,000,000.00 (two hundred million rupiah) for violators of article 19 paragraph (2) UUPK (article 60 UUPK). If the results of dispute resolution through BPSK are not approved by one or both parties, the consumer can file a lawsuit in court.[23]

Resolving consumer disputes through litigation is not as complicated as consumers in general imagine. Because in resolving consumer disputes through court, the party whose burden is to prove whether or not there is an element of error is the burden and responsibility of the business actor. Next for proof at trial. With the recognition of electronic evidence as valid evidence in court as stated in Article 5 paragraphs 1, 2 and 3 of the ITE Law, the evidence that can be used by consumers in court is proof of transfer or proof of payment, SMS or e-mail. stating the agreement to make the purchase, as well as the name, address, telephone number and account number of the business actor.[24]

4. Conclusion

The conclusion in this research is that online buying and selling in Indonesia is regulated in Law no. 11 of 2008 concerning Information and Electronic Transactions and Law Number 8 of 1999 concerning Consumer Protection. Legal protection for sellers and buyers is regulated in the UUPK, namely in Article 4 regarding consumer rights, including obtaining goods according to exchange value and conditions as well as guarantees, obtaining information about goods, and receiving compensation. Dispute resolution regarding online buying and selling problems can be resolved through two channels, namely the litigation route (court) and the non-litigation route (not through court). Dispute resolution through non-litigation can be carried out by mediation, consolidation or arbitration.

[22] Johnson, Haerani Husainy, & Maisa. Perlindungan Hukum Bagi Konsumen Terhadap Iklan Produk Barang Yang Tidak Sesuai Dengan Apa Yang Di Iklankan Di Media Sosial Facebook Oleh Pelaku Usaha. *Jurnal Kolaboratif Sains*, 2019, 2(1), hlm 2048.
[23] Regina Lumentut, Wulanmas A.P.G.Frederik & Revi Korah. Perlindungan Hukum Terhadap Konsumen atas Pengiriman Barang tidak Sesuai Pesanan dalam Transaksi Jual Beli Online Melalui Aplikasi Tiktok Shop. *Lex Administratum*, 2023, 11(3), hlm 10.
[24] Setia Putra. Perlindungan Hukum Terhadap Konsumen Dalam Transaksi Jual-Beli Melalui E-Commerce. *Jurnal Ilmu Hukum*, 2014, 5(2), hlm. 203.

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