

Conference Paper

Analysis Juridical of Transactions Through the Internet (E-Commerce) Related with Consumer Protection Law

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Abstract

In era of information technology and computerization is affecting the world of commerce. To conduct business transactions, buyer simply through an online electronic media, known as the internet. Business with information technology is e-commerce, e-commerce is any form of trade transactions of goods or services by using electronic media. In practice many scams that often occurs in the buying and selling through the internet. The researcher objective is to know what a legal action can be taken by consumers who are harmed in e-commerce transactions and to determine whether the rule of law contained in the Consumer Protection Act have enough guarantees to protect the rights of e-commerce consumers. To answer this problem, researcher uses analytical descriptive method by studying and examining the problem with legal approach of juridical normative, which is supported by collecting data and case information in print and internet media. The results showed that a lack of understanding and knowledge of the law of consumers about their rights as consumers of e-commerce, so don't know what action to do when experiencing a loss in e-commerce transactions, the government is expected to active in providing consumer guidance and dissemination of consumer protection laws through the public media.

Keywords: Consumer protection, E-Commerce, Transaction

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1. Introduction

The development of science and technology today has brought mankind to the era of information technology and computerization. One of them is internet technology. Internet technology originated from the creation of computer network technology around the year 1969.

Computer networks are several computers connected to each other by using a cable in one location, for example in one office or building. This computer network works so

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that computer users can exchange information and data with other computer users. At the beginning of its creation, computer networks were exploited by the American armed forces. After that the world of education in there feel very need to study and develop computer network. Finally in 1970 the internet is widely used in universities in America and is growing rapidly to date.

In order for computer users with different brands and types to interact, experts create a protocol or similar language for use on the internet. Its name is Transmission Control Protocol or Transmission Control Protocol (TPC) and Internet Protocol (IP)

The Internet is the most important technology since the personal computers (PC - Personal Computers) invention and revolution of in the 1980s. This technology offers new developments in the world of commerce, not only in terms of expanding computers investment into local networks, Local Area Network (LAN) and network technology personal computers, but also a new, more fun way to use the web as the basis for broader business applications, which broadens the way an organization / company communicates and enhances their ability to share information. This new technology (internet) will enhance the ability of organizations / companies to compete with other organizations / companies. For example in terms of business communications and various information that does not depend on place and time, as well as various other rare and valuable resources. This is of course more effective and efficient to market the company's products, either in the form of goods or services, and can be an effort to improve the services of the company. With the hope of increasing revenue and reducing operational costs[1].

Initially electronic trading was conducted within business transactions among large companies, banks, and among other financial institutions. But in its development focus of electronic commerce through the internet is shifting approaching individual consumers. Electronic commerce is currently being done not only by big companies, but also by small and medium-sized companies, as well as individual businesses[1].

Internet technology is also widely used by corporations, educational institutions, government agencies, and military institutions around the world to provide information to people everywhere. Even every internet user can communicate with other users from all over the world. They can exchange information quickly and easily.

Formerly the internet can only be used by certain circles and with certain components only. But now people are at home can connect to the internet by using a modem and telephone network. Any desired information can be obtained anytime and anywhere, not limited by time and place[11].

Utilization of internet technology to date has been much to provide convenience for humans in carrying out daily work, not least for the whole Indonesian society. Although

the phone penetration is still not fully reach the layers of people across the country, but it must be recognized the wave of Internet penetration has been so great in Indonesia.

According to data from the Association of Internet Service Providers Indonesia (APJII), the average internet growth in Indonesia reaches 25-40 percent per year. In 2008 internet users in Indonesia is estimated to reach 27 million people, in 2012 increased to 62 million people, And in 2013 to 74 million more people. Can we imagine that the number continues to increase until now.

This rapid technological development has brought many changes to the lifestyle of most Indonesians. The pattern of life is happening almost in all areas, both social, cultural, trade and other fields. In the field of commerce, the Internet began to be widely used as a medium of business activity primarily because of its contribution to efficiency. There is easy to transact and do business in the world of commerce through the internet, so that one does not need to go to the place of bidding / selling of a good or service. In conducting business transactions a buyer does not have to look directly with the seller as in a conventional market, but simply through the internet as an electronic media connected online[12].

With this kind of internet technology, human action, human interaction, and human relationships have significantly changed, especially in trade or business relations. In the business world, information and communication technology is used one of them for electronic trading activity or known as Electronic Commerce (e-commerce) or Electronic Business. E-Commerce is a trade using internet communication network. Broadly speaking, electronic commerce or e-commerce is defined as a way to sell and purchase goods and services over the Internet, which also includes various aspects such as purchase transactions, ordering systems for goods / services, ordering data management, funds transfer for payment, confirmation payment by the buyer and others.

In Indonesia electronic commerce or e-commerce is no longer a new thing at this time. This trade is known as online shopping or shopping via the internet. Currently e-commerce is one of the economic activities that are in great demand by Indonesians. In the era of globalization and free trade today, many emerging various products / services that are marketed to consumers via the internet.

Online stores have become one of the market sales of products and services that many people in demand today. Easily see the products offered as well as other advantages make online stores into business opportunities are quite popular today. The presence of e-commerce provides a great deal of indulgence to consumers, because consumers do not need to go out to shop. As expressed by the Visa Survey of Indonesia,

the convenience of shopping at any time at home and even from anywhere is a very encouraging factor in the development of e-commerce trends in Indonesia.

Respondents revealed that the availability of facilities to be able to compare prices, shop for the latest products, and access to attractive offers is the main reason they shop online. More than half (60%) of online shopping respondents can get discounts and promotional offers. Almost half of them (49%) feel that online shopping offers cheaper rates than stores in malls or department stores. While a quarter of respondents (39%) said that with online shopping they can get more information when they want to make a decision.

In addition to having many factors that can be profitable, electronic commerce also has many shortcomings. In this type of trade there are both positive and negative things. It is said to be positive because these conditions can provide benefits for consumers to freely choose goods / services they want, without having to come directly to the store that sells. Consumers have the freedom to determine the type and goods / services quality according to their needs, without being limited by time.

It is said to be negative because the condition causes the consumer's position to be weaker than the business actor position in this case the seller [4]. It is said to be weaker because consumers are more likely to experience losses, such as wrong or damaged product shipments or even less, more expensive prices, and payment security by consumers.

Google survey-Indonesia results found that concerns about receiving damaged goods (67%) or goods worries are not up to (54%) is a factor that worries them in online shopping. Customers are also wary of the additional cost of shipping and customs (65%). The possibility of personal information misuse also limits them to online shopping (60%). A total of 59 percent wanted immediate confirmation at the time of payment and 58 percent attached importance to a product return policy for online purchases.

In conducting electronic commerce transactions on the internet, trust is a concept that consumers desire. Because in this transaction, the consumer as a buyer of a product must pay some money through the transfer of funds via a bank before the product is delivered by the seller. With this concept of trust, consumers can be free to buy anything, anywhere and anytime over a product or service on the internet, without worrying about being fooled. [5]

This principle of trust is one of the important principles known in the law of the covenant, namely [8]: If a person who entered into a contract with another party should be able to grow trust between the two parties that each other will fulfill his achievement

in the future. Without trust, the agreement is not possible to be held by the parties. With this belief both parties bind themselves to a treaty that has had binding power as Law.

Consumers are often faced with the weak legal knowledge problem and their lack of understanding of their rights as consumers. One such right shall mean the right to choose goods and / or services and obtain goods and / or services in accordance with the exchange rates and the conditions and promised guarantees provided for in Article 4 point b of Law no. 8 of 1999 on Consumer Protection. The same Article is also contained in Article 9 of Law no. 11 of 2008 on Information and Electronic Transactions which states that the right of consumers to obtain complete and true information about the products offered.

Moreover, consumers also do not have bargaining position (a position to negotiate or bargain the price of goods to be purchased) that is balanced with the business actor or the seller. This can also be seen in the rules and standard agreements that must be approved by the consumer, and the standard clauses (standard provisions) that are not informative and not preceded by mutual agreement between the parties who transact and can not be negotiable.[4] Such things are very possible for consumers to be harmed either directly or indirectly. Therefore, in this electronic commerce is very necessary the existence of a legislation, which will provide legal certainty and tranquility for consumers in trading and buying. The Consumer Protection Act and the ITE Act are expected to be the maximum legal protection in regulating all the intricacies of electronic commerce in Indonesia.

In the Law no. 11 of 2008 on Information and Electronic Transactions, it is stated a rule of law that regulates the use of supporting instruments based on information technology used in e-commerce transactions such as:[10]

1. Authentication of legal subjects that make transactions over the internet;
2. When the agreement is in force and has a legally binding force;
3. Object of the traded transactions
4. Right transfer mechanism;
5. Legal relations and accountability of parties involved in transactions of both sellers, buyers, and supporters such as banking, internet service providers (ISPs), and others;
6. Legality of electronic record documents and digital signatures as evidence;
7. Dispute resolution mechanisms;

8. Choice of legal and judicial forums authorized to resolve disputes.

The ITE Act provides two important things:

1. There is recognition of electronic transactions and electronic documents in the framework of legal engagement and law of evidence, so that the legal certainty of electronic transactions can be guaranteed
2. Classification of measures including qualification of law violations related to misuse of IT (Information Technology) accompanied by criminal sanctions.

As set forth in Article 5 paragraph (1) of the ITE Law stating that electronic information and / or printed out products are legal legal evidence and an extension of valid evidence in accordance with applicable law in Indonesia. With the recognition of electronic transactions and electronic documents, at least the activities of e-commerce transactions have their legal basis.

In fact the Consumer Protection Act has not provided maximum legal protection to the interests of consumers and the existence of the Consumer Protection Act and the ITE Act is still perceived as insufficient to protect the rights of consumers in conducting online transactions. It is these things that encourage researchers to conduct research with the aim:

1. To find out what legal action can be taken by consumers who are harmed in e-commerce transactions.
2. To know the extent of the legal rules contained in Law No. 8 of 1999 on Consumer Protection in guaranteeing and protecting consumer rights of e-commerce.

2. Platform Theory

E-commerce can be understood as an activity of trade transactions both goods and services through electronic media, which provides convenience for the business in transacting activities via the internet. The advantages of e-commerce lies in the efficiency and ease, where the internet users do not need to meet directly with other parties. Thus all transactions are conducted without the face-to-face between the parties, and they base the sale and purchase transactions on the trust of each other. The sale and purchase agreement that took place between the parties was also done electronically. Therefore there is no agreement file as in the conventional sale and purchase transactions.

Under the provisions of Article 1 Sub-Article 2 of the ITE Law, it is stated that electronic transactions are legal acts committed by computers, computer networks and /

or other electronic media. The transaction of electronic trading or e-commerce is one of the embodiments of the above provisions. In e-commerce transactions the parties concerned in doing the legal relationship poured through a form of agreement or contract that is also done electronically. This is in accordance with the provisions of Article 1 number 17 of the ITE Law, stating that electronic contracts are agreements of parties made through electronic systems.

In Article 5 of the Law on ITE is regulated on the proof of sale and purchase transactions through the internet:

1. Electronic information and / or electronic documents and / or prints are valid evidence.
2. Electronic information and / or electronic documents and / or printed products as referred to in paragraph (1) shall constitute an extension of valid evidence in accordance with applicable Law of Procedure in Indonesia.
3. Electronic information and / or electronic documents are declared valid if using electronic system in accordance with the provisions set forth in this Law.

According to the general explanation of the ITE Act, although e-commerce activities are virtual (cyberspace), but can be categorized as a real action or legal act. Activities in the virtual world (cyber) is a virtual activity that has a very real impact even though the evidence is electronic. Therefore the subject of the offender must also be qualified as a person who has committed a real legal act.

The term consumer protection relates to legal protection. Therefore, consumer protection contains legal aspects. The material that gets protection is not just physical, but moreover its abstract rights. In other words, consumer protection is in fact identical to the protection provided by the law on consumer rights [2].

The term consumer comes from the word consumer from English, or a consument of the Dutch language. Understanding of the consumer depends on where he is. Literally the meaning of the word consumer is (opposite of the manufacturer) any person who uses the goods. The purpose of the use of goods or services will then determine which consumer groups belong to which the user is. Similarly, the Great English-Indonesian Dictionary gives the word consumer as a user or consumer [9].

In the case of consumer or buyer protection, will not be separated from the legal arrangements derived from Law no. 8 year 1999 on Consumer Protection, because in line with the function of e-commerce as a vehicle for trade transactions, which base the

contract between the two parties or more, then the rules relating to the contract issue will be covered therein.

According to Michael Chissick and Kelman that in e-commerce actually there are no new things, but only old problems are packed in a new frame that is through the internet [7]. So according to Chissick and Kelman, things that apply to contractual relations or trade transactions are done conventionally, also apply to contracts made through the internet.

In electronic buying and selling transaction, related parties are [3]:

1. Seller or merchant or entrepreneur offering a product through the internet as a business actor;
2. Buyer or consumer means any person not prohibited by law, which receives an offer from a seller or a business actor and wishes to conduct sale and purchase transactions offered by the seller / business actor / merchant;
3. Banks as the channel of funds from buyers or consumers to sellers or business actors / merchants, because the sale and purchase transactions electronically sellers and buyers do not deal directly, because they are in different locations so that payment can be made through an intermediary in this case the bank;
4. Provider as internet access service provider.

Basically the process of buying and selling transactions electronically is not much different from the process of ordinary or conventional trading transactions in the real world. The implementation of electronic buying and selling transactions is done in several stages:

1. Offers, made by the seller or business actor through the website on the internet [3].
2. Acceptance, may be done subject to offer.
3. Payments, may be made directly or indirectly, for example through internet facilities, but are still subject to the national financial system.
4. Delivery, is a process done after payment of goods offered by the seller to the buyer, in this case the buyer is entitled to the receipt of the intended goods.

3. Research Methods

3.1. Type of research

The research method used in this research is analytical descriptive, supported by empirical or sociological juridical method, meaning that by giving explanation or description of an event under study by analyzing based on data obtained from research result, which then connected with materials primary, secondary and tertiary law, to come to conclusions.

3.2. Approach method

The approach used in this research is the normative juridical approach, that is by reviewing the legal principles and legal system related to the subject matter of this research.

3.3. Research stages

Stages performed in this research are:

3.3.1. Observation

Conducted to obtain primary data, by collecting data cases related to consumer protection e-commerce in Indonesia.

3.3.2. Library research

Library research, Which is done to obtain secondary data, which is a method of collecting data by reading or assembling books of legislation and other literary sources related to the object of research. This method is done to obtain secondary data, by conducting an assessment of:

1. Primary Legal Material, is data that has binding legal force, in this case Law No. 8 of 1999 on Consumer Protection.
2. Secondary Legal Materials, are materials that are closely related to primary legal materials and can help and analyze. For example law journals, books, research results, legal papers and so forth.
3. Tertiary Law Material, i.e. materials that provide about primary and secondary legal materials. For example newspapers, magazines, clipping and so forth.

3.4. Data analysis method

The data obtained in this study is then analyzed by qualitative juridical. The qualitative juridical method is a juridical analysis with qualitative data to draw conclusions as outlined in the form of statements and writings. The analysis of this data is based on the legislation as the norm of positive law and without using mathematical models of statistic, after qualitative analysis then the data will be presented descriptively qualitative and systematic.

4. Discussion

4.1. Legal actions that can be taken by consumers harmed in e-commerce transactions

Legal actions for e-commerce problems that occur in Indonesia can be through non-litigation and litigation channels.

Non-litigation lanes are the settlement of consumer disputes outside the court in order to reach agreement on the form and amount of compensation and / or concerning certain legal actions to ensure non-recurrence of losses suffered by consumers (Article 47 UUPK). The settlement of consumer disputes through non-litigation channels is used to deal with litigation, in Article 45 paragraph (4) of the UUPK it is mentioned that if a consumer dispute resolution action is out of court, a court action can only be pursued if the attempt is declared unsuccessful by either party or by the parties to the dispute. Settlement of disputes through non-litigation channels can be reached through Non-Governmental Organizations in this case the Indonesian Consumers Foundation (YLKI).

While the legal basis for resolving disputes through litigation lane is contained in Article 45 paragraph (1) UUPK and Article 38 paragraph (1) UU ITE, in Article 45 paragraph (1) UUPK stated that "any disadvantaged consumers may sue business actors through duty to resolve disputes between consumers and business actors or through courts residing in the general judicial environment".

And Article 38 Paragraph (1) of the ITE Law states that "any person may file a lawsuit against the party that administers the Electronic System and / or use the Information Technology that causes loss".

Considering consumers in filing a lawsuit in a consumer dispute is that any form of loss suffered by a consumer may be brought to justice regardless of the magnitude of the losses suffered, it is permitted by considering the following [6]: the interests of the

plaintiff (consumer) can not be measured solely from the value of money loss, the belief that the door of justice should be open to everyone including small and poor consumers, to maintain the integrity of judicial bodies, that the provision of an element of error is the burden and responsibility of the business actor because UUPK adheres to the principle of product responsibility as regulated in Article 19 jo Article 28 UUPK.

Legal action is the whole business or action to solve a legal problem. In e-commerce there are two kinds of legal action that is:

4.1.1. Preventive efforts

Preventive efforts can be interpreted as any attempt made to prevent the occurrence of an event or circumstances that are not desirable. In e-commerce transactions, this undesirable condition is the occurrence of losses, especially losses on the consumer. Preventive measures need to be applied as e-commerce dispute settlement is relatively difficult, takes a long time to complete and often requires a high cost. For example, two Hongkong and Australians need five months to get a refund of the goods purchased. Therefore, e-commerce disputes should be prevented as much as possible.

In efforts to prevent the occurrence of loss of steps that can be taken that is:

A. Consumer development

Consumer coaching is contained in Article 29 paragraph (1) UUPK where it is mentioned that:

The Government is responsible for fostering the implementation of consumer protection that ensures the rights of consumers and business actors and the implementation of the obligations of consumers and business actors.

Then in paragraph (4) mentioned that the guidance of the implementation of consumer protection aims to:

1. Creation of a business climate and a healthy relationship between business actors and consumers.
2. The development of consumer self-help organizations.
3. Improving the quality of human resources and improving research and development activities in the field of consumer protection.

Consumer coaching aims to let consumers know their rights as consumers and encourage business actors to work in a healthy way. In the current era of information

technology, consumer coaching should be improved given that education is the best defense to overcome all acts of legal irregularities.

B. Supervision and protection

The government's obligation to conduct supervision and protection is contained in UUPK Article 30 paragraph (1) stating that:

Supervision over the implementation of consumer protection as well as the application of the provisions of its laws and regulations are administered by governments, communities and non-governmental consumer protection agencies.

This supervision shall be carried out by the relevant minister and / or technical minister. This is relevant to the ITE Law Article 40 paragraph (2), where the Article states that:

The Government shall protect the public interest of all kinds of interference as a result of the misuse of Electronic Information and Electronic Transactions that disrupt public order, in accordance with the provisions of the laws and regulations.

Protection by the government is shown in paragraphs (3), (4), and (5) where it is concluded that agencies possessing strategic electronic data shall make a backup of such electronic data for the purpose of data protection in the event of damage, loss or attack on electronic data.

4.1.2. Repressive attempts

A repressive effort is an attempt to solve a legal problem that has already occurred. This effort is used when there has been a dispute between business actors and consumers. According to UUPK, one of the rights of consumers is to get advocacy, protection and efforts to resolve disputes appropriately (UUPK Article 4 point e). In addition, one of the obligations of a business actor is to provide compensation, indemnification and / or compensation for losses arising from the use, use and use of traded goods and / or services (UUPK Article 7 butir f). In e-commerce transactions many things can cause a dispute as mentioned above that can reduce the sense of consumer confidence in e-commerce system, so that required an effective dispute resolution mechanism and efficient.

4.2. Legal protection for e-commerce consumer considered by law no. 8 of 1999 on consumer protection

Based on the description above, it can be seen that the settlement of consumer disputes through the litigation path is not as complicated as imagined by consumers in general. Because in the settlement of consumer disputes through the courts, the party charged to prove whether there is an element of error is the burden and responsibility of the business actor.

Consumer protection laws have been able to provide adequate legal protection for consumers in the conduct of moving and selling transactions through e-commerce. Such legal protection is evident in the provisions of UUPK, supported by the legal rules in Law No. 12 of 2008 on ITE where both laws have governed the use of consumer personal data, the legal terms of an e-commerce transaction, the use of CA (Certification Authority), the problem of the standard clause and regulates the prohibited act for the business actor in marketing and producing goods and / or services to the consumer, which can serve as the guiding object (goods and services) in e-commerce transactions.

An act against the law or in violation of the Law, may occur in an electronic sale and purchase transaction. Consumers as the aggrieved party may demand the responsibility of the business actor, provided that it can be proved that the elements of the act are against the law. Therefore, in e-commerce activities, it is necessary that the legal force in addition to regulating the rights and obligations of business actors and consumers, also strictly regulate the actions categorized as prohibited acts that can lead to legal sanctions for anyone who performs such acts.

In the Consumer Protection Act is regulated on prohibited acts for business actors, which aims to protect the rights of consumers, provided for in Article 8 through Article 17. The responsibility of business actors has also been regulated in the same law, namely in Article 19 through Article 28. As for the imposition of sanctions for prohibited acts, the UUPK sets out two types of sanctions namely administrative sanctions and criminal sanctions, provided for in Articles 60 to 63. Similarly in the Act of the Act the act is regulated in Articles 27 to 37, and all such prohibited conduct shall have criminal provisions provided for in Article 45 to Article 52 of the ITE Act.

5. Conclusion

5.1. Conclusion

Based on the above discussion, the following conclusions can be drawn:

1. Legal actions that can be taken by consumers who are harmed in e-commerce transactions can be through preventive and repressive efforts. Preventive efforts aim to prevent the occurrence of a loss that is by way of supervision by the parties concerned, be it government, non-governmental organizations, as well as the community itself as a consumer, and conduct consumer coaching. While repressive effort consists of two lines namely non litigation path through Non-Governmental Organization, Directorate of Consumer Protection Disperindag, Consumer Dispute Settlement Agency (BPSK) and own business actor. And the second line through litigation / Justice.
2. Law No. 8 of 1999 on Consumer Protection is supported by Law No. 11 of 2008 on ITE has been able to provide adequate legal protection for consumers in conducting e-commerce transactions. The protection of the law is seen in the provisions stipulated in the UUPK and UU ITE, where both regulations have regulated the rights and obligations of business actors and consumers.

5.2. Suggestions

Suggestions that can be given for legal protection for consumers in e-commerce transactions can be guaranteed are as follows:

1. In order that the People's Legislative Assembly revise Law No. 8 of 1999 on Consumer Protection, which accommodates Law No. 11 of 2008 on Information and Electronic Transactions, to include obligations for e-commerce websites that collect consumer personal data to include their privacy policies so that data the personal data of the consumer is kept confidential.
2. It is necessary to socialize the ITE Act so that the public will know that there is now a law regulating the use of electronic information and transactions. Besides, with the socialization of UU ITE expected business actors, consumers and the government to prepare themselves to the provisions of the law in the Law on ITE so that the implementation of the ITE Act can be run effectively.

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