



Responsibilities of Business Actors to Consumers Due to Incompatibility of Objects and Specifications in Electronic Transaction Agreements

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Abstract

This article aims to determine the legal protection for the violation or non-fulfilment of consumer rights in transactions conducted electronically and to determine the form of responsibility of online business actors for acts of default against consumers in transactions conducted electronically. Then, this research is normative juridical research supported by a statutory approach. In addition, this research is also supported by various data sources, including primary legal materials in the form of laws and regulations, secondary legal materials consisting of books and scientific journals, and tertiary legal materials covering various complementary information and data originating from various websites on the Internet. The results of the study explain that in conducting transactions of goods and/or services, especially those carried out electronically, various laws and regulations such as UUPK, UU ITE, and PP concerning the Implementation of Electronic Systems and Transactions have guaranteed the rights of consumers and provided obligations to business actors. In this case, if the consumer's rights are violated or, in other words, the business actor does not carry out his obligations. The consumer is entitled to compensation or compensation. Therefore, as a form of responsibility for the occurrence of violations of consumer rights in the form of receiving goods or objects and specifications that do not match the specifications, business actors are obliged to provide compensation. If this cannot be fulfilled, it is possible to take various litigation and non-litigation dispute resolution options.

Keywords : *Responsibility; Businessmen; Consumer; non-conformance; Object; Specifics; Electronic Transaction*

INTRODUCTION

Today, along with the advancement of Science and Technology (IPTEK), it can be said that it has a very impact on meeting the needs of people's lives that are increasingly easier. The level of convenience can be measured rather than the effectiveness of time, cost, and others. In essence, transactions in trade today have 2 (two) ways, namely conventional trade transactions with traditional values and procedures and modern trade

transactions, which are currently known as electronic commerce or electronic transactions.¹ The definition of Electronic Transactions has been explained explicitly in Article 1 Number 2 of Law Number 19 of 2016 concerning Information and Electronic Transactions, from now on referred to as the UU ITE where Electronic Transaction is a legal act carried out using a computer, computer network, and/or other electronic media.²

From this definition, we can imagine that Trading with Electronic Transactions allows for a sale and purchase with a valid agreement because it fulfils subjective and objective requirements as stipulated in Article 1320 of the Civil Code (KUHP) and Article 47 paragraph (2) of PP Number 82 of 2012 concerning Electronic System and Transaction Operation, from now on referred to as PP on Electronic System and Transaction Operation. The agreement can be valid even without physical interaction between the business actor and the consumer. However, we cannot deny that problems still arise between business actors and consumers in buying and selling electronically. The sale and purchase include a consensual agreement, namely an agreement that is valid, binding or has legal force at the moment an agreement is reached between the seller and the buyer regarding the essential elements, namely goods and prices, even though the sale and purchase are about immovable goods.³

Consumer complaints against complex electronic transactions or online shopping have fluctuated in the past three years. Based on his records, according to voi.id the Indonesian Consumers Foundation (YLKI), it was explained that in 2019 there were 1,871 consumer complaints. YLKI also detailed that the cases were dominated by complaints about banking with 106 complaints, online loans with 96 complaints, housing with 81 complaints and online shopping reaching 34 complaints. Discussing 34 complaints on online shopping, based on data from the Indonesian Consumers Foundation (YLKI), online shopping problems are divided into eight categories sorted by the number of percentage problems. First, the ordered goods were not received as much as 28.2 percent. Second, the ordered goods did not meet the specifications of 15.3 percent. Third, 15.3 percent refund. Fourth, 12.8 percent transaction system. Fifth, fraud is 12.8 percent. Sixth, others by 7.6 percent. Seventh, the server system as much as 5.1 percent. Then, hijacking a 2.5 percent account.⁴

Even in 2020, along with the Covid-19 Pandemic, which encouraged an increase in electronic transactions, complaints against online shopping increased. In this case, YLKI explained that consumer complaints had soared significantly to 3,692. The electronic transaction sector dominated the criticism, which reached 33.5%.⁵ Furthermore, looking at YLKI's 2021 consumer complaint reports, it can be seen that leaves

¹ Desy Ary Setyawati, Dahlan Ali, and M. Nur Rasyid, "Perlindungan Bagi Hak Konsumen Dan Tanggung Jawab Pelaku Usaha Dalam Perjanjian Transaksi Elektronik," *Syiah Kuala Law Journal* 1, no. 3 (December 2017): 46-64, <https://doi.org/10.24815/sklj.v1i3.9638>.

² Republik Indonesia, "Pasal 1 Angka 2 Undang-Undang Nomor 19 Tahun 2016 Tentang Perubahan Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik" (2016).

³ Subekti, *Hukum Perjanjian* (Jakarta: Intermasa, 2002).

⁴ Tim Editor, "Bukalapak Dan JD.ID Jadi E-Commerce Paling Bermasalah Versi YLKI," 2022.

⁵ Riski, "YLKI Catat Kenaikan Pengaduan Konsumen Tahun 2020, Dimana Posisi Sektor Perumahan?," 2021.

related to electronic transactions, including online shopping and online transportation, occupy the second position with the most complaints filed.⁶

Looking back carefully at each category of complaints, especially in the 2019 YLKI consumer complaint report, it can be seen that there are problems that are qualitatively considered trivial by some people but quantitatively experienced by many people. These problems cause harm to consumers. Namely, the specifications of goods or objects received by consumers are often not following what has been promised (agreement). Therefore, the actions taken by business actors against consumers constitute a breach of contract.

The act of default by business actors in electronic transactions is a violation of consumer rights, as regulated in Article 4 letter C of Law Number 8 of 1999 concerning Consumer Protection, from now on referred to as UUPK, which explains that consumer rights are the right to correct information, clear, and honest regarding the conditions and guarantees of goods and/or services.⁷ Therefore, there is a need for legal protection for consumers in electronic transactions and the responsibility of business actors for defaults and violations of consumer rights.

RESEARCH METHODS

This article is normative juridical research supported by the method of legislation. This method will pay attention to the type, hierarchy and suitability of the content contained in various laws and regulations that follow the topics raised in the research. Then, the various provisions contained in the various laws and regulations will be studied further by considering the findings in this study. So that later, it will be known the implementation of an arrangement at the practical level.⁸

To answer the various problem formulations raised in the research, data sources in the form of primary, secondary and tertiary legal materials will be used. The primary legal material in question is in the form of various laws and regulations regarding consumer protection and electronic transactions, including the Civil Code (KUHPer) (KUHPer), Law no. 8 of 1999 concerning Consumer Protection, Law no. 11 of 2008 concerning ITE, Law no. 19 of 2016 regarding Amendments to the UU ITE, PP No. 82 of 2012 concerning the Implementation of Electronic Systems and Transactions, and other laws and regulations. Furthermore, secondary legal materials, including books and journals related to the research topic, will also be maximized.

Then, tertiary legal materials are complementary in the form of various information and data from various internet pages, ensuring validity. These different sources of data were obtained through library research. After collecting multiple data, the data will be analyzed comprehensively through qualitative descriptive techniques.

⁶ Anggun P. Situmorang, "Jasa Keuangan Paling Banyak Diadukan Konsumen Kepada YLKI Sepanjang 2021," 2022.

⁷ Republik Indonesia, "Pasal 4 Huruf c Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen" (1999).

⁸ Peter Machmud Marzuki, *Penelitian Hukum*, 12th ed. (Jakarta: Prenadamedia Group, 2016), 142.

FINDINGS

Legal Protection for Violation of Consumer Rights in Electronic Transactions (E-Commerce)

In pursuit of profit targets, business actors, especially in online transactions, sometimes ignore the rights of consumers. This makes consumers feel disadvantaged. Therefore protection is needed for consumers. Legal protection is the protection of dignity and worth, as well as the recognition of human rights owned by legal subjects based on legal provisions from arbitrariness or as a collection of rules or rules that will be able to protect one thing from another. Concerning consumers, it means that the law protects consumer rights from something that results in the non-fulfilment of these rights.⁹

Protection for consumers of online transactions takes effect from the moment the agreement is declared, namely when the agreement between the consumer and the business actor comes into existence (birth).¹⁰ Legal protection for consumers in a trade transaction is realized in 2 (two) forms of regulation, namely legal protection in the form of specific laws (laws, PPs) that are general in nature and legal defence based on special agreements made by the parties. Its form is in the form of substance or content of the accords between consumers and business actors, such as provisions on compensation, the period for filing claims, dispute resolution, and so on.¹¹

In this case, it is necessary to know that, in essence, birth is based on an agreement. In a sale and purchase transaction conducted electronically, an agreement can be ascertained if the buyer receives an offer against the offer submitted by the seller. Where of course, it will also explain the mechanism or process of offering and receiving goods on various platforms for buying and selling electronically via the internet.¹² As a form of legal protection, the UUPK has been issued, but to explicitly regulate electronic transactions, the UU ITE has been given. It can be seen in the preamble that any changes or reforms in the UU ITE are to ensure the recognition and respect for the rights and freedoms of others and to fulfil fair demands following considerations of security and public order in a democratic society. It is necessary to amend Law No. 11 of 2008 concerning Information and Electronic Transactions to realize justice, public order, and legal certainty.

Based on YLKI data, placing the category of ordered goods not according to specifications in electronic buying and selling transactions or online shopping as second among eight categories violates consumer rights. Therefore, consumer legal protection can be seen from the guarantee of consumer rights as stated in Article 4 of the UUPK. More specifically, in the case of discrepancies between objects and specifications between the agreement and those received by consumers, it can be said that online business actors have ignored the rights of consumers in Article 4 letter c as the fundamental rights of consumers in transactions that consumers have the right to correct, clear, and accurate information. And be honest about the conditions and guarantees of goods and/or services.

⁹ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia* (Surabaya: Bina Ilmu, 2014).

¹⁰ Enni Soerjati Priowirjanto, "Pengaturan Transaksi Elektronik Dan Pelaksanaannya Di Indonesia Dikaitkan Dengan Perlindungan E-Konsumen," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 1, no. 2 (2014): 286-300, <https://doi.org/10.22304/pjih.v1n2.a5>.

¹¹ Sukarni, *Cyber Law Kontrak Elektronik Dalam Bayang-Bayang Pelaku Usaha* (Jakarta: Pustaka Suara, 2007).

¹² Ahmad Miru, *Hukum Kontrak & Perancangan Kontrak* (Depok: Rajawali Pers, 2020).

Then it is also explained that the contractual relationship (agreement) between the Business Actor and the consumer has explained the object and specifications, but if the business actor trades goods/services that are not following the promises stated in the label, e-ticket, information, advertisement or sales promotion the goods and/or services. Then the consumer has the right to get compensation, compensation and/or replacement if the goods and/or services received are not following the agreement or not correctly.¹³ Suppose there are violations or problems in Electronic Transactions. In that case, the UU ITE and/or PP concerning the Implementation of Electronic Systems and Transactions can be the legal basis and direction in their settlement. Based on the above, dispute resolution in electronic trading transactions can be made civilly or criminally, thus providing a legal umbrella for the people in Indonesia.

Forms of Responsibility of Online Business Actors for Defaults to Consumers in Electronic Transactions (E-Commerce)

In general, responsibilities can be distinguished in civil law based on the law of engagement, namely legal duties due to a contractual agreement/relationship (privity of contract) as stated in Article 1338 of the Civil Code (KUHPer) and Article 1317 of the Civil Code (KUHPer) as well as responsibilities due to law.¹⁴ In the electronic transaction agreement/contract as described in Article 48 paragraph (3) of the PP concerning the Operation of Electronic Systems and Transactions, it must at least contain matters such as identity data of the parties, objects and specifications, Electronic Transaction requirements, prices and fees, procedures for there is a cancellation by the parties, provisions that give the injured party the right to be able to return the goods and/or request a replacement of the product if there is a hidden defect; and choice of law for Electronic Transaction settlement.¹⁵

Regarding cases of incompatibility of objects and specifications in electronic transactions, for example, X bought a smartphone at the Online Shop (Y) with the Samsung brand type Samsung Galaxy M20. In the agreement, it was stated that the specifications for 64 GB ROM and 4 GB RAM were priced at Rp. 2.799.000, but when the smartphone was received by X, there was a discrepancy in the specifications of the smart tree, which X received was a smartphone with the Samsung brand type Samsung Galaxy M10 with 32 ROM specifications and 3 GB RAM priced at Rp. 1,699,000. Of course, the non-conformance of these specifications causes losses for X.

Suppose a business actor provides objects and specifications not following the electronic contract that has been agreed upon as one of the conditions for the validity of an agreement as described in Article 1320 of the

¹³ Herlin Setiani and Muhammad Taufiq, "PERLINDUNGAN KONSUMEN ATAS BARANG YANG TIDAK SESUAI DENGAN PERJANJIAN DALAM PERDAGANGAN ELEKTRONIK DIKAITKAN DENGAN UNDANG-UNDANG INFORMASI DAN TRANSAKSI ELEKTRONIK," *JURNAL ILMIAH LIVING LAW* 10, no. 2 (October 2018): 114, <https://doi.org/10.30997/jill.v10i2.1497>.

¹⁴ Nining Latianingsih, "PRINSIP TANGGUNG JAWAB PELAKU USAHA DALAM TRANSAKSI ELEKTRONIK MENURUT UNDANG-UNDANG INFORMASI DAN TRANSAKSI ELEKTRONIK," *Jurnal Ekonomi Dan Bisnis* 11, no. 2 (2012): 71-76.

¹⁵ Republik Indonesia, "Pasal 48 Ayat (3) Peraturan Pemerintah Nomor 82 Tahun 2012 Tentang Penyelenggaraan Sistem Dan Transaksi Elektronik" (2012).

Civil Law and, more specifically, regarding Electronic Transactions. In that case, it is regulated in Article 47 paragraph (2) of the PP on System Operation. and Electronic Transactions. Therefore, the business actor can be said to be in default. Then the business actor has violated the rights of consumers and the obligations of business actors as stipulated in Article 4 letter C and Article 7 of the UUPK, explaining that consumer rights are the right to correct, transparent, and honest information regarding the conditions and guarantees of goods and/or services as well as the perpetrators. Businesses are required to provide correct, clear and unbiased information regarding the condition and warranty of goods and/or services and provide explanations for use, repair and maintenance. However, we must pay attention to that due to a breach of the contractual relationship.

Thus, it is not the law that determines the payment of compensation and the amount of compensation but the two parties who assess everything in the agreement.¹⁶ Therefore, business actors must be responsible for the incompatibility of objects and specifications in electronic transactions based on the principle of absolute responsibility (strict liability) or product liability. The embodiment of the principle of responsibility is to provide compensation for losses suffered by consumers as a result of consuming goods.¹⁷ If it is considered in the article, it implies the perpetrator's responsibility in compensation to the consumer. It is said that business actors are responsible for providing balance for:¹⁸

- a. Damage;
- b. pollution;
- c. consumer damage and loss;
- d. consumer losses.

As a result of consuming goods and/or services produced or traded. The form of compensation is in the form of:¹⁹

- a. money refund,
- b. replacement of similar or equivalent goods and/or services
- c. health care and/or appropriate compensation.

In essence, Article 49 paragraph (2) of the PP concerning the Implementation of Electronic Systems and Transactions has clearly explained that in the first step in following up on discrepancies in objects and specifications in online transactions, business actors should provide a time limit for consumers to return the goods sent if they do not match. By agreement or there is a hidden defect. Then if the request for compensation is not fulfilled, there are options for dispute resolution between online business actors and consumers, as stated in Article 45 of the UUPK, that can be taken through litigation or non-litigation, where a lawsuit through litigation can be brought if the effort is declared unsuccessful by one of the parties or by the

¹⁶ Grace Joice S. N. Rumimper, "Tanggung Jawab Pelaku Usaha Terhadap Konsumen Dalam Jual Beli Melalui Internet," *Jurnal Hukum Unsrat* 1, no. 3 (2013).

¹⁷ Komang Bulan Tri Laksmi Devi and Ni Ketut Supasti Dharmawan, "TANGGUNG JAWAB PELAKU USAHA TERHADAP KONSUMEN TERKAIT CACAT TERSEMBUNYI PADA BARANG ELEKTRONIK DALAM TRANSAKSI ONLINE," *Kertha Semaya: Journal Ilmu Hukum* 4, no. 1 (2016): 1-14.

¹⁸ Celina Tri Siwi Kristiyanti, *Hukum Perlindungan Konsumen* (Jakarta: Sinar Grafika, 2011).

¹⁹ Kristiyanti.

disputing parties. Efforts to resolve disputes in the UUPK are in line with Article 38 of the UU ITE, which requires filing a lawsuit for consumer losses.

CONCLUSION

Efforts to protect consumer law can be seen in forming legal products such as UUPK, UU ITE, and PP for implementing Electronic Systems and Transactions. In addition, to ensure the rights of consumers in buying and selling transactions, as stated in Article 4 of the UUPK, it can be confirmed that consumers have the right to receive goods and/or services as objects of sale and purchase that have the exact exchange rate, conditions and guarantees. Therefore, it should also be noted that in buying and selling transactions, consumers should receive appropriate information about the object being traded. The consequences of the goods and/or services obtained by consumers are not following the agreement, such as incompatibility of objects and specifications. Then the consumer is entitled to compensation, compensation and/or replacement.

Business actors who have committed acts of default in a contractual relationship with consumers in electronic transactions must be responsible based on the principle of absolute responsibility (strict liability) or Product liability. The embodiment of the principle of responsibility is to provide compensation for losses suffered by consumers as a result of consuming goods. By providing compensation for losses, consumers suffer as a result of consuming goods. In certain situations, it is possible that compensation is not fulfilled, so there are options for dispute resolution through litigation or non-litigation.

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