

COMPARISON OF LEGAL CONSUMER PROTECTION SYSTEMS IN E-COMMERCE TRANSACTIONS TO SUPPORT DIGITAL ECONOMIC GROWTH IN INDONESIA

Fajar Sugianto^a, Ellora Sukardi^a, Tomy Michael^{b*}

^aThe Faculty of Law, Universitas Pelita Harapan Karawaci, Tangerang, Indonesia

^bThe Faculty of Law, Universitas 17 Agustus 1945 Surabaya, Jawa Timur, Indonesia

*Correspondence author: Email: tomy@untag-sby.ac.id

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Abstract

The e-commerce industry in Indonesia is growing rapidly amidst the slowdown in the country's economy. Moreover, most of the e-commerce business players in Indonesia are small, micro, and medium scale (SME). Consumers in e-commerce transactions have a greater risk of loss than business actors or merchants. In other words, consumer rights in e-commerce transactions are very vulnerable, so that consumers in e-commerce transactions are in a very weak bargaining position. The importance of a country regulating legal protection for consumers is generally based on considerations of its actuality and urgency. Legal regulations for e-commerce transactions are designed to create the level of certainty needed in business transactions and to protect consumers in e-commerce transactions in order to support the growth of the digital economy in Indonesia. Current legal protection regulations for consumers in Indonesia have not been able to protect consumers in cross-border e-commerce transactions. In e-commerce transactions, there are no national borders. The consumer protection laws of each country, such as those of Indonesia, are not sufficiently helpful because e-commerce operates across borders. This type of research is normative legal research that uses statutory regulations.

Keywords: Consumer; Economic; Protection.

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1. INTRODUCTION

The e-commerce industry in Indonesia is growing rapidly amidst the slowdown in the country's economy. Moreover, most of the e-commerce business players in Indonesia are small, micro and medium scale (SME). As we know, SME businesses are the most resilient even in times of economic crisis. The potential of the e-commerce industry in Indonesia cannot be overestimated. Data from Ernst & Young's analysis show that the growth in the value of online business sales in Indonesia has increased by 40 percent each year. There are approximately 93.4 million internet users and 71.0 million smartphone users in Indonesia. Not only for seeking information and chatting, people in big cities are now using the internet for e-commerce activities as a part of their lifestyle.

The consumption behavior of tens of millions of middle class people in Indonesia is the reason why e-commerce in Indonesia will continue to grow. The Minister of Communication and Information, Rudiantara (2014-2019), estimated the value of e-commerce in Indonesia in 2016 at US \$30 billion, or the equivalent of Rp. 395 trillion. This figure is predicted to increase to US \$130 billion, or the equivalent of Rp. 1,714 trillion, in 2020 (Bernada, 2017).

Advances in science and technology are the driving force for productivity and efficiency in the production of goods or services. In the pursuit of productivity and efficiency, either directly or indirectly, consumers are the ones who bear the impact in the end. For this reason, legal protection for consumers is considered very important.

The technology that was created, developed along with human needs to make life easier than ever before. Information technology can be used for communicating with each other, for data dissemination and retrieval, for teaching and learning activities, for providing services, and for conducting business transactions (Arwani, 2017; Hussain et al., 2020). The history of mankind cannot be separated from the history of equipment development, particularly the development of technological equipment. Information technology has changed the way of doing transactions and has opened up new opportunities for conducting business transactions. In addition, the development of information technology has caused commerce to be borderless and has led to significant, rapid social changes. Information technology is currently a double-edged sword because, in addition to contributing to the improvement of welfare, progress, and human civilization, it is also an effective means of committing crimes (Supanto, 2016).

The process of globalization, which allows the free flow of information over the internet and increases in the international flow of goods and people, as well as membership in various world organizations, has the potential to raise legal issues that have an impact on society and inevitably must be handled by experts (Frenki, 2011). Various problems that arise as a result of information technology and that must be faced by the legal system should be clear and predictable (Shalf & Leland, 2015).

The development of e-commerce transactions cannot be separated from the growth of the internet because e-commerce is only possible through the internet network.

The rapid growth of internet users is a fact that makes the internet an effective medium for businesses to introduce and sell goods or services to potential consumers from all over the world. E-commerce is a modern business model that is *non-face* (does not present business players physically) and *non-sign* (does not use original signatures) (Swardhana, 2020). The presence of e-commerce allows the creation of healthy competition between small, medium, and large businesses in seizing market share (Peters II, 2020). Issues of consumer legal protection are increasingly complicated when consumers conduct e-commerce transactions with merchants from different countries. In buying and selling via the internet, cheating often occurs. The fraud may involve the existence of a business actor, the goods purchased, the price of the goods, and the method of payment by consumers. Fraud may involve business actors. For example, the business actor concerned may be a fictitious shop. Fraud may involve goods sent by business actors. For example, the goods are not sent to consumers, or there is a prolonged delay in delivery, or damage to the goods sent, or the goods sent are defective, and so on.

In addition, theoretical and empirical studies tend to show conflicting perspectives and findings about consumer legal protection. Only one major research question was carefully investigated: How to protect consumers in e-commerce transactions to support the growth of the digital economy in Indonesia?

2. LEGAL DEFINITIONS

2.1. Definitions of legal consumer

The variety of problems that arise cannot be separated from consumer rights that the business actor sometimes cannot fulfill. The Law of the Republic of Indonesia Number 8 of 1999 concerning consumer protection contains at least nine rights of consumers:

- 1. The right to comfort, security, and safety in consuming goods and/or services. The seller must provide a guarantee of comfort, security, and safety for the goods it sells when the consumer has consumed it in accordance with the provisions and procedures for the use of the goods.
- 2. The right to choose and obtain goods and/or services in accordance with the exchange rate, conditions, and promised guarantees. The seller should be able to provide more than one stock of goods for each type of goods so that consumers can freely make choices according to what the manufacturer promised.
- 3. The right to correct, clear, and honest information regarding the condition and guarantee of goods and/or services. The manufacturer must be

completely honest in providing all information for the goods he sells, both advantages and disadvantages.

- 4. The right to have their opinions and complaints heard about the goods and/or services used. It is a good step if the manufacturer is willing to give a grace period for the buyer to decide whether to continue buying the item, exchange it for another, or even cancel the purchase of goods as a part of the sale and purchase agreement.
- 5. The right to obtain advocacy, protection, and dispute resolution efforts for proper consumer protection if consumers feel disadvantaged, and the wrong is on the side of the business actor. Consumers can contact non-governmental consumer protection organizations, such as the Indonesian Consumers Foundation, or they can also take legal action by suing business actors through the courts. In addition, they can resolve problems through the consumer dispute resolution agency outside of the court. This is known as mediation, arbitration, or consolidation. Later, the agency will summon business actors deemed to be detrimental to consumers. Finally, based on the investigation, it will be decided whether the consumer was harmed.
- 6. The right to receive consumer guidance and education.
- 7. The right to be treated or served correctly and honestly and not to be discriminated against.
- 8. The right to get compensation, indemnity, and/or replacement if the goods and/or services received are not in accordance with the agreement, or not as they should be.
- 9. Rights stipulated in the provisions of other laws and regulations.

Broadly speaking, there are several problems that arise in this regard with consumer rights in e-commerce transactions (Bernada, 2017):

- 1. Consumers cannot immediately identify, see, or touch the goods that will be ordered.
- 2. Information about the products is unclear and/or uncertainty exists whether consumers have obtained the necessary relevant information to make a decision in a transaction.
- 3. Legal subject status of business actors is unclear.

- 4. There is no guarantee of transaction security and privacy as well as an explanation of the risks associated with the system used, especially in terms of payments made electronically either by credit card or electronic cash.
- 5. Unbalanced risk imposition exists because, generally for buying and selling on the internet, payment is made in full in advance by the consumer, while the goods are not certain to be accepted, or will follow later because the guarantee is a guarantee of the goods, not a receipt of the goods.
- 6. Transactions that cross borders raise questions regarding which country's legal jurisdiction should be enforced.

2.2. Definitions of e-commerce

David Baum's definition of e-commerce, as quoted by Onno W. Purbo and Aang Wahyudi, is "E-commerce is a dynamic set of technologies business process and applications that link enterprises, consumers, and communities through electronic transactions and the electronic exchange of services, goods and information" (Boysen et al., 2019). Based on this definition, it can be interpreted that e-commerce is a set of technologies, dynamic business processes, and applications that connect companies with consumers and other communities through electronic transactions, both in commercial goods, services, and information carried out electronically.

Kalakota and Whinston (2005) elaborated the definition of e-commerce:

- 1. It is an activity of sending communication and information, products/services, or payments made by telephone, computer networks, or other electronic infrastructure.
- 2. It can be a business process by applying technology to carry out business transactions or workflows.
- 3. As a service, e-commerce is defined as a means enabling enterprises, consumers, and management companies to lower service costs.
- 4. Online, e-commerce is defined as a means that makes possible sales and purchases of products and information via the internet and other services online.

Through e-commerce transactions, traditional market concepts (buyers and sellers meet physically) transform into the telemarketing concept, namely, long-distance trade using the internet. Classified e-commerce transactions are very popular because they provide a very large business opportunity. But although they provide a very tantalizing opportunity, e-commerce transactions also create new problems because they have special characteristics. The special characteristics occur because in e-commerce transactions, sellers (business actors) and buyers (consumers) do not meet directly; the goods are offered only through pictures.

E-commerce transactions have several special characteristics that differentiate them from conventional trading (Kalakota & Whinston, 2005):

- 1. Unlimited transactions:

Through internet facilities, distance is not an obstacle in the world of trade because the internet makes it easy for business actors to market their products internationally. By creating a website, anyone from anywhere in the world can access and conduct e-commerce transactions.

- 2. Anonymous transactions:

Business actors and consumers do not have to meet face-to-face in transactions. The business does not need the name of the consumer as long as the payment has been authorized by a predetermined payment system provider, which usually uses a credit card.

- 3. Digital and non-digital products:

The products offered are not only non-digital products, such as goods, but can be digital products, such as data, computer software, music, and others.

Openness in e-commerce transactions has an impact on the increasing diversity of new problems. As expressed by Sutan Remy Sjahdeini, there are twelve issues; namely, whether the law applies to cyberspace, the use of domain names, evidence, acknowledgment of an email notification as a written notification, internet piracy, consumer protection, taxation, legal relations between the parties, protection of the right to privacy, limitation of responsibility, choice law, and finally, the jurisdiction of the court.

3. METHOD

This type of research is normative legal research using statutory regulations. The focus of normative juridical research, in accordance with the distinctive character of legal scholarship, lies in the study of law or legal studies of positive law that include three layers of legal scholarship, consisting of a dogmatic study of law, legal theory, and legal philosophy (Jolls et al., 1998).

4. RESEARCH RESULTS AND DISCUSSION

4.1. E-commerce in the Indonesian legal perspective

The rapid development of e-commerce has had a negative impact on consumers, which places consumers in a weak bargaining position. If it is linked between consumer rights that are universally recognized with consumer rights in e-commerce transactions, consumer rights are at risk to be violated and to put consumers in e-commerce transactions in a weak bargaining position, especially consumer transactions in e-commerce conducted across countries (Reich, 2005). Once formulated that the problems

that consumers often face include the attitude of business actors who act fraudulently at the time of sale and purchase contracts. Problems may include unclear content of standard contracts, defective products, dissatisfaction with services offered, misleading advertisements, as well as after sales service problems. Cases related to e-commerce transactions, especially regarding product defects, dishonest information in web advertising, or late delivery of goods, are often experienced by consumers in such cases. Considering that the policy framework that protects consumers in various kinds of transactions on the internet seems not to have been formulated by the Indonesian government, it is necessary to study the rights of consumers and the responsibilities of business actors in transactions on the internet, as well as the settlement mechanisms that can be carried out by consumers. E-commerce transactions cause many problems that tend to harm consumers and cause various legal problems. Almost the same as buying and selling contracts in general, the online buying and selling contract also consists of an offer and an acceptance because an agreement always begins with an offer by one party and an acceptance by the other party. If the e-commerce transaction takes place between parties, especially individuals, who are residents of two different countries, problems will arise in dispute resolution, whether it is carried out by applying the laws of the defendant's country or based on the laws of the complainant's country, or whether it should be based on the state of the perpetrator business, or whether it is based on state law of the consumer.

Likewise, regarding the choice of a court or arbitration body that will examine the dispute, if the parties do not determine the choice of court or an arbitration body first, there will be a problem if a dispute arises. Issues of jurisdiction, or the place where the transaction occurs, choice of law issues, or choice of forums are all potential problems. Business transactions via net media or telematics do not indicate the place where the transaction occurs. This is very important juridically because it relates to the jurisdiction of the competent court in the case of disputes and choice of law issues. Because most e-commerce transactions are carried out by parties who are in different national legal jurisdictions, while the terms and conditions when online agreements are made do not explicitly and clearly designate or contain choice of law clauses, it becomes a matter of state law, or of which judge has the authority to judge, if a dispute occurs in the future (Makarim, 2014). Jurisdiction is which court has the authority to examine and adjudicate a dispute. E-commerce does not have geographic boundaries because in long distance communication, anyone can access the website from anywhere. In online trading, a person does not know in which country the transaction information can be accessed, so jurisdiction is a major issue in cyberspace (Pramono, 2004). In the perspective of international civil law, linkages with information technology activities are needed to expand national jurisdiction if there are legal issues that arise that extend to the jurisdictions of other countries. For this reason, cross-country cooperation that falls within the scope of international law is needed, including cooperation for increase in the economy that is not covered by the national law of a country. All of this cooperation certainly needs to be contained in legal products. In law, the right legal product is an international agreement. International treaties bind countries that sign or ratify (Pebrianti, 2012). Given the characteristics of e-commerce, consumers will face various legal issues, and consumer protection regulations are currently unable to protect consumers in cross-country e-commerce transactions in Indonesia. In e-commerce transactions there are no

national borders. The consumer protection laws of each country, such as those of Indonesia, are not sufficiently helpful because e-commerce operates across borders. In this regard, legal protection for consumers must be carried out with an international approach through law harmonization and cooperation with law enforcement institutions. The need for legal instruments that can be applied, either in the form of new laws or regulations or legal rules tailored to the needs of this medium. Without protection and legal certainty for consumers, Indonesia will only become a dumping ground for inferior goods and services. What is more worrying is that the people's aspirations will be more difficult to achieve. In essence, legal protection for parties is the same; namely, the role of the government is to protect the interests of business actors and consumers in the framework of trade. The role of government referred to here includes national and international aspects. That is, the demand exists, legal certainty in conducting an engagement must be clear from the aspect of national law through the formation of regulations in the field of legal protection for consumers, as well as aspects of international law through international agreements or legal harmonization. In the United States, a special commission has been formed to deal with legal protection for consumers in a variety of activities on the internet. The commission is the Federal Trade Commission (FTC), and it performs the functions outlined in the Federal Trade Commission Act to protect consumers against various forms of fraud, cheating, and other unethical practices. The FTC is given broad powers to file lawsuits in the interests of consumers (Prasetyo & Trisyanti, 2018).

From that country's practices, the Indonesian state can take lessons about the importance of digital consumer protection. The United States, as a country with significant growth in the digital economy ecosystem, has paid serious attention to the protection of digital economy consumers through an institution that was specially formed to carry out consumer protection functions. Indonesia, as a country that plans to encourage digital economic growth, seriously needs to create a digital economy ecosystem that supports digital economic growth and legal protection for consumers in a balanced manner. As a system, the implementation of legal protection for consumers cannot be separated from the context of national development. It can be said that there is a role for the Consumer Protection Law in implementing legal protection for consumers. The background of legal protection for consumers, based on the considerations of Consumer Protection Law, is based on the following abstractable motives: realizing economic democracy; encouraging the diversification of goods and/or services as a means of increasing the welfare of the wider community in the era of globalization, as well as ensuring their availability; economic globalization must continue to guarantee improvement in the welfare of the wider community as well as the certainty of the quality, quantity, and safety of goods and/or services; enhancing the dignity of consumers through law to achieve a balance of protection for the interests of consumers and business actors in a healthy economy. Legal protection by the state for consumers with weak bargaining power is very urgent.

In trade transactions on the internet where the relationship between business actors and consumers is getting closer and more open, state interference, cooperation between countries, and international cooperation are urgently needed to regulate the

relationship patterns of business actors, consumers, and a system of legal protection for consumers. Legal protection of consumer rights in e-commerce transactions cannot be provided by just one legal aspect, but by a system of legal instruments capable of providing simultaneous and comprehensive protection.

Thus, human technology does not always produce positive outcomes, but can also have various negative impacts. One of the important meanings of the need for regulations in the field of information technology is to provide legal protection for consumers in e-commerce transactions. Legal protection for consumers is absolutely carried out by the state in accordance with the relevant General Assembly resolution of the United Nations. In Indonesia, the significance of regulating consumer rights through law is part of the implementation as a welfare state because the Indonesian Constitution, apart from being a political constitution, can also be called an economic constitution, namely a constitution containing the idea of a welfare state that has grown because of the influence of socialism since the nineteenth century.

4.2. Indonesian Constitution as an economic constitution

Referring to Article 27 paragraph (2) of the Indonesian Constitution, which reads every citizen has the right to work and a decent living for humanity, and Article 33 of the Indonesian Constitution, namely, (1) The economy is structured as a joint effort based on the principle of kinship; (2) Production branches which are important to the state and which affect the livelihoods of the public shall be controlled by the state; (3) The land and water and natural resources contained therein shall be controlled by the state and used for the greatest prosperity of the people. How important consumer rights are, thus giving birth to thoughts that argue that consumer rights are the fourth generation of human rights, which are the key words in the conception of human rights for future development (Ruhl, 2011).

To defend consumer rights, it is stated that dispute resolution can be pursued through the courts or outside the courts based on the voluntary choice of the disputing parties. Settlement of disputes outside the courts can be pursued through the Consumer Dispute Settlement Agency, whose duties and powers include the implementation of handling and resolving consumer disputes by means of mediation, arbitration, or conciliation, which apart from being a medium for dispute resolution can also impose administrative sanctions on business actors who violate certain restrictions imposed on businesses.

The idea of the consumer's right to information began in the era of globalization when the boundaries between nations blurred. Information has become a commodity that is considered by consumers because they often become a victim as a result of not being critical and not questioning the existence of information about the goods and/or services consumed, even though the information is complete or not in determining the decision to buy or not to buy a product. Business actors must be able to provide adequate and clear information for consumers in selecting goods. General standards regarding information that must be provided to consumers concern price, quality, and other information that can

assist consumers in deciding to buy goods according to their needs and the quality of the goods. In turn, this can help producers to determine the form or standard of products offered to consumers. Of course, the *caveat venditor* principle plays an important role in which business actors must be able to provide protection to consumers from unsafe products. So, business actors must be careful about the product output that comes from the industrial products that they produce. The most important point is that information must be free from manipulation of data.

4.3. Product legal liability

In the event that there is no contractual relationship between the business actor and the consumer, the business actor's responsibility is based on product liability. Product liability is the direct civil responsibility of business actors for losses suffered by consumers due to using the business's products. This provision is contained in Article 19 of the Consumer Protection Law, which states that business actors are responsible for compensating consumers for damages, pollution, and/or losses due to consuming goods produced or traded.

In addition to product liability, which is a direct responsibility, there is *tortious liability* in *product liability*, namely, responsibility based on illegal acts. In terms of proof, proof of error is no longer a burden on consumers, but rather a burden that must be borne by the business actor to prove his innocence. This is regulated in Article 28 of the Consumer Protection Law, which states that proof of whether or not there is an element of error in the claim for compensation in Article 19 of the Consumer Protection Law in the form of damage, pollution and/or consumer loss (Siallagan, 2016).

4.4. Responsibility for security

Electronic transaction networks must have the ability to ensure the security and reliability of information flows. The parties involved in the transaction must have high confidence in the network infrastructure used. Of course, business actors need to provide adequate system networks to control transaction security. A business transaction requires trust as consumers will choose to make transactions with sellers they trust because it involves the money they give. Business transactions that are not face-to-face, apart from having to be based on trust, also depend on communication, which makes it important for consumers to know that messages have been sent and received by and/or only to the correct address without error. For the seller, it is also important to keep messages confidential and secure from rivals who could interfere with the data. In addition, computer systems must be kept secure to respond to consumers' desire to transact safely.

Security in transactions includes communication security systems, computer security, physical security, the security of individuals involved, administrative security, and the security of the media used. The security provided aims to prevent threats that may arise before they are actually realized, minimize the possibility of these threats occurring, and reduce the consequences that will arise after the threats are realized (Susanto, 2020). So, the security system that needs to be considered in e-commerce is the existence of a

safe mechanism for how consumers make payments on a website. The concept of legal responsibility is part of the concept of legal obligation. The principle of responsibility is a very important part of consumer protection law. In cases of violations of consumer rights, care is needed in analyzing who should be responsible and to what extent a responsibility can be borne by the parties concerned. The general principles of responsibility of business actors in law, which in practice can be distinguished, includes the principle of responsibility based on the element of error. This principle states that a person can be held responsible legally if there is an element of wrongdoing. If the plaintiff fails to prove that there is an element of guilt on the part of the defendant, the lawsuit fails. Because consumers (as victims) are generally unfamiliar with the processes in an industry that uses sophisticated technology, it can be impossible to prove precisely where the fault lies that caused the defect in the goods and/or services. This principle is closely related to the legal relationship between consumers and business actors, which bases contracts on not being a requirement.

Actions against the law in the narrow sense are actions that are against the rights of others and/or contrary to their own legal obligations as determined by law. This means that something that is not regulated in law, even though it is detrimental to other parties, is not an act against the law. Therefore, it is impossible for the business actor to be held accountable. So, there are four elements why an act is categorized as an act against the law; namely, that the act is against the rights of others, is contrary to one's own legal obligations, is against morality, or is contrary to the requirements that must be heeded in what society says about other people or objects.

5. CONCLUSION

Consumers in e-commerce transactions have a greater risk of loss than business actors or merchants. In other words, consumer rights in e-commerce transactions are very vulnerable, so that consumers in e-commerce transactions are in a very weak bargaining position. The importance of a country regulating legal protection for consumers is generally based on considerations of its actuality and urgency. Legal regulations in e-commerce transactions aim to create the level of certainty needed in business transactions and to protect consumers in e-commerce transactions in order to support the growth of the digital economy in Indonesia. Current legal protection regulations for consumers have not been able to protect consumers in cross-border e-commerce transactions in Indonesia. In e-commerce transactions, there are no national borders, so the consumer protection laws of each country, such as those of Indonesia, are not sufficiently helpful, because e-commerce operates across borders.

We recommend that consumers who want to carry out e-commerce transactions should pay more attention to the element of caution in conducting transactions. First, identify the web address that provides buying and selling services on the internet and understand the standard clauses held by the business actor or seller and understand the rights and obligations of both the seller and the buyer. The state should improve the laws and regulations on legal protection for consumers of e-commerce transactions by considering the alternative ideas offered in this paper to be able to provide legal protection

for consumers in more comprehensive e-commerce transactions to support the growth of the digital economy in Indonesia.

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