

HULMAN PANJAITAN (LEGAL PROTECTION OF CONSUMERS IN DIGITAL TRANSACTIONS)

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LEGAL PROTECTION OF CONSUMERS IN DIGITAL TRANSACTIONS

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Abstract - Digital transactions or also known as e-commerce transactions are already a demand and necessity. It has brought several advantages for consumers in conducting transactions because it makes it easier and has penetrated the boundaries of space and time. Even though it must be recognized that there are negative impacts in the form of legal problems that are often detrimental to the rights and interests of consumers, such as goods that are sent late or not sent at all, hidden defects in the goods sent, and errors in the delivery of goods, for which several legal institutions are needed to protect the rights and interests of consumers who are harmed. From the perspective of civil law, it is necessary to question the validity of electronic contracts made in the form of standard clauses which form the basis of the legal relationship between consumers and business actors in digital transactions. Through secondary data in the form of primary and secondary legal materials, it can be seen that Law No. 8 of 1999 concerning Consumer Protection, Law No. 11 of 2008 concerning Electronic Information and Transactions, and the Civil Code can be used as legal institutions to protect consumers from legal problems they experience. From the perspective of civil law, electronic contracts as the basis for legal relations between consumers and business actors made in the form of standard clauses, are valid according to the law following Article 1338 of the Civil Code in conjunction with Article 1320 of the Civil Code. Its enforcement is of course limited by Article 1337 of the Civil Code and Article 18 of Law No. 8 of 1999.

Keywords: Consumer Protection, Digital Transactions

2 INTRODUCTION

The history of mankind is often said to be the history of the development of equipment or the history of technological development. Information technology has changed the ways of transacting and opened up new opportunities for conducting business transactions. In addition, the development of information technology has caused the world to become borderless and caused significant social changes to take place so quickly. 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 unlawful acts [1].

The development of digital transactions is inseparable from the growth and progress of the internet because the internet network is the medium for conducting digital transactions. The rapid increase in the quantity of internet users is a fact that makes the internet one of the effective media for business actors in selling the goods or services they produce to the public.

Electronic-based buying and selling and consumer transactions have become a common and common thing to do because it is practical and easy. Such buying and selling transactions are known as digital transactions, which are also known as e-commerce transactions. E-commerce transactions have changed the classic business paradigm by fostering interaction models between producers and consumers in the virtual world. The trading system used in e-commerce is designed to sign electronically. These signatures are designed from the moment of purchase, inspection, and delivery. [2]

Several business actors offer goods and/or services produced through cyberspace or the internet, including Buka Lapak, Toko Pedia, Traveloka, Tiket.Com, and so on. Almost all of us have made transactions through these business actors without ever meeting face to face or even knowing where the real existence (office address) is. This era is known as the digital era. Everything is done through electronic means or the internet.



Some of the business actors or merchants in *e-commerce* trade are as follows:



The definition of *e-commerce*, which according to the law is known as electronic transactions, is a legal action carried out using a computer, computer network, and/or other electronic media [3]. Article 1 point 2 of Government Regulation No. 80/2019 on Trading Through Electronic Systems determines that Trading Through Electronic Systems (PMSE) is a trade whose transactions are carried out through a series of electronic devices and procedures.

The impact of the internet as a result of advances in information technology development for consumers on the one hand has changed consumer behavior to become more critical and selective in determining the products they will choose. Likewise, for producers, this progress provides a positive in facilitating product marketing so that it can save costs and time. [4]

In *e-commerce* transactions, more practical paperless business transactions are created and *e-commerce* transactions cannot meet directly (face to face) the parties to the transaction, so it can be said that *e-commerce* is a new economic driver in the field of technology. In addition to these advantages, the negative aspects of this development are related to security issues in transactions using *e-commerce* media. The emergence of forms of abuse that tend to harm consumers and cause various legal problems in conducting *e-commerce* transactions. [5]

In situations like this, the rights of buyers or consumers are often ignored and never seem to receive attention from business actors. Transactions are only based on a relationship of trust (credo). From a legal aspect, when problems occur, it is realized that a transaction is not sufficient to be based on a relationship of trust but requires documents as written evidence. It is not uncommon to hear there are several events or occurrences, where a buyer has paid a certain amount of money to a business actor as agreed through an *e-commerce* transaction, but what happens, is the goods received do not match what was ordered or arrive late in the hands of the buyer or consumer. Not to mention the breakdown of communication between the buyer and the business actor, where the business actor then cannot be contacted immediately after receiving the money transfer from the buyer.

The Ministry of Trade received 3,692 consumer complaints during the first semester of 2022. As many as 86.1% or 3,181 complaints came from *e-commerce*. [6]

Another problem in the perspective of civil law is the validity of electronic contracts or agreements that are used as the basis for consumer transactions in electronic contracts that are made by default by business actors. Is its enforcement following the law so that it is binding and has legal force.

In connection with the matters described above, the problem to be analyzed is how the validity of electronic contracts is the basis for legal relations between consumers and business actors and how legal protection for consumers in digital transactions is intended.

1. METHODS

This research is normative juridical legal research or also known as doctrinal legal research aimed at and related to the inventory of legal principles or principles, the application of the law, especially those related to consumer protection law. The data source used is secondary data with primary,



secondary, and tertiary legal materials with data collection techniques through document studies. The data analysis used is qualitative data analysis.

2. RESULTS AND DISCUSSION

2.1 Validity of Electronic Contracts According to Law

In terms of grammar, the term consumer comes from the word consumer (English) or *consument/consument* (Dutch), which can simply be interpreted as a user or user of a good or service in society. According to the GCPL Law, a consumer is any person who uses goods and/or services available in the community, both for the benefit of themselves, their families, other people, and other living beings and not for trade. The Draft Amendment to Law No. 8 of 1999 on Consumer Protection formulates consumers as final consumers, namely individuals or entities, both in the form of legal entities and not legal entities, who use goods and/or utilize services with the aim of not being traded again or not being used to produce other goods and/or not being used to produce other services. [7]

Meanwhile, a business actor is any individual or business entity, whether a legal entity or not, established and domiciled or conducting business activities within the jurisdiction of the Republic of Indonesia, either alone or jointly through an agreement, organizing business activities in various economic fields.

As described above, the terminology of digital transactions conceptually is *e-commerce* transactions which can be interpreted as a form or method of transactions without using paper but transactions carried out through electronic or internet media. From an economic aspect, digital transactions or *e-commerce* can be interpreted as a modern business methodology that seeks to meet the organizational needs of traders and consumers to reduce costs, improve the quality of goods and services and increase the speed of delivery services.

Digital transactions or what is known as *e-commerce*, by David Baum as quoted by Onno W. Purbo and Ang Arif Wahyudi, states that “*e-commerce is a dynamic set of technologies, applications, and business processes that link enterprises, consumers and communities through electronic transactions and the electronic exchange of goods, services, and information*”, meaning that *e-commerce* is a dynamic set of technologies, applications and business processes that link companies, consumers and certain communities through electronic transactions and trade in goods, services and information carried out electronically. [8]

Mariam Darus Badruzaman argues that *e-commerce* is a business activity involving consumers, manufactures, internet service providers, and intermediaries using computer networks, namely the internet. [9]

Ninik Suparmi argues that *e-commerce* is a modern business model that is *non-face* (does not present business actors physically) and *non-sign* (does not use original signatures) [10]. On the other hand, Farizal F. Kamal argues that the presence of *e-commerce* allows the creation of healthy competition between small, medium, and large businesses in capturing market share [11].

As business actors, consumers are at greater risk, in other words, consumer rights are very vulnerable. This is due to the very weak bargaining position of consumers so their rights are very risky to be violated. This unbalanced situation and position can be seen concerning the imposition of *standard contracts* by business actors in marketing and/or distributing the goods or services they produce, including in electronic transactions made in the form of electronic contracts. Consumers do not have access to bargain the contents and conditions contained in the standard agreement except to accept or reject because everything has been determined unilaterally by business actors.

Therefore, the government through Law No. 8/1999 on Consumer Protection has protected consumers by establishing several rights for consumers and obligations for business actors as stipulated in Article 4 and Article 7 of the GCPL, including determining the number of restrictions for business actors that must be obeyed concerning the distribution of goods and/or services produced. Including and not excluding restrictions when business actors apply standard agreements in distributing the goods or services they produce.



Consumer protection is all efforts that ensure legal certainty to protect consumers. With this understanding, it is hoped that it will negate the arbitrary actions and exploitation of business actors toward consumers to achieve their economic goals. Legal protection is an effort regulated in law to prevent violations of the law. For this reason, preventing violations of the law that can harm the public interest, it can be done by enforcing legal rules to ensure that legal protection continues for a certain period. Therefore, legal protection is also related to law enforcement issues, meaning that the success of law enforcement will provide optimal legal protection for the community.

In practice, every electronic transaction is set out in an electronic contract, which is an agreement between the parties made electronically [12]. Electronic transactions outlined in electronic contracts are binding on the parties (Article 18 of the ITE Law). From the perspective of civil law, the existence of an electronic contract made in the form of a standard formula, its binding force is the same as a "law" for the parties who make it based on Article 1338 of the Civil Code [13]. which is known as the principle of freedom of contract. The limitation is regulated in Article 1337 of the Civil Code. [14] When an electronic transaction is considered to have occurred, it is determined in Article 20 of the ITE Law, namely when the transaction offer sent by the sender has been received and approved by the recipient, which sign of approval must be done by an electronic recipient statement. This means that in this case the accepted theory is adopted. In the Elucidation of Article 20, it is explained that an electronic transaction occurs at the time of agreement between the parties, which can take the form of, among others, checking data, identity, personal identification number (PIN), or password. Taking into account the provisions in Article 20 and its Explanation, it can be argued that from this point of view, electronic contracts are a type of consensual agreement that is subject to the principle of consensualism. More explicitly, the application of the principle of consensualism in electronic contracts is stipulated through Article 50 of Government Regulation No. 82/2012 by determining that electronic transactions occur when the parties reach an agreement. The agreement in question occurs when the transaction offer sent by the Sender has been accepted and approved by the Recipient which can be done in the way:

- a. An act of acceptance that expresses consent, or
- b. The act of receiving and/or using the object by the Electronic System User

The Explanation of Article 50 states that the act of acceptance that expresses consent, among others, is by clicking on the consent electronically by the Electronic System User. Thus, the legal protection provided starts from the agreement in the electronic contract. More specifically, Article 47 of Government Regulation No. 82/2012 stipulates the conditions for the validity of an electronic contract, namely:

1. There is an agreement between the parties
2. Performed by a legal subject who is capable or authorized to represent something with the provisions of laws and regulations
3. There are certain things
4. The object of the transaction must not conflict with laws and regulations, decency, and public order.

It turns out that what is regulated in Article 47 above is a further elaboration of Article 1320 of the Civil Code which regulates the legal requirements of an agreement, namely:

1. Agreement of those who bind themselves
2. Capacity to act in law
3. The existence of certain things
4. The existence of a lawful cause

The realization of several rights for consumers and obligations for business actors stipulated in the GCPL as stipulated in Article 4 and Article 7, is also regulated and stipulated in Article 46 of Government Regulation No. 82/2012 by stipulating that the implementation of electronic transactions must pay attention to good faith, the principles of prudence, transparency, accountability, and fairness.

Specifically for standard clauses, Article 48 of Government Regulation No. 82/2012 determines that electronic contracts made in the form of standard clauses must comply with the provisions regarding



standard clauses as stipulated in laws and regulations. From a legal perspective, as in the Explanation of Article 48, the laws and regulations referred to are Law No. 8 of 1999 on Consumer Protection as stipulated in Article 18 which determines that business actors in offering goods and/or services intended for trade are prohibited from making or including standard clauses in every document and/or agreement if:

- a. states the transfer of responsibility of the business actor;
- b. states that business actors have the right to refuse the return of goods purchased by consumers;
- c. states that business actors have the right to refuse the return of money paid for goods and/or services purchased by consumers;
- d. states the granting of power from consumers to business actors either directly or indirectly to take all unilateral actions related to goods purchased by consumers in installments;
- e. regulates the proof of the loss of use of goods or utilization of services purchased by consumers;
- f. gives business actors the right to reduce the benefits of services or reduce the wealth of consumers who are the object of buying and selling services;
- g. states that consumers are subject to regulations in the form of new rules, additions, continuation, and/or further changes made unilaterally by business actors during the period when consumers utilize the services they buy;
- h. states that consumers authorize business actors to encumber mortgage rights, liens, or security rights against goods purchased by consumers in installments.

Business actors are prohibited from including standard clauses whose location or shape is difficult to see or cannot be read clearly, or whose disclosure is difficult to understand.

2.2 Consumer Protection in Digital Transactions

As described above, digital transactions in fulfilling the needs of a person's life are a demand, although not without problems. Below will be described various problems that have arisen and experienced by consumers concerning digital transactions or especially online shopping. According to 2015 data, as many as 54% of *e-commerce* users have experienced the following things: [15]



In connection with the many problems described above, it is known that during Semester I/2022, the Ministry of Trade of the Republic of Indonesia received 3,692 complaints, and as many as 86.1% or 3,181 were complaints originating from consumers in *e-commerce* transactions. [16]

Given the many problems faced by consumers in digital transactions, consumers need to be protected. Law No. 8 of 1998 has been established as a legal umbrella for consumer protection (*umbrella act*) to provide protection to consumers from the actions of business actors. Hulman Panjaitan argues that the birth of Law No. 8 of 1999 on Consumer Protection is an encouraging thing for consumers, especially regarding the philosophy of national development that national development, including development that protects consumers, is in the context of building a complete Indonesian human being based on the philosophy of statehood of the Republic of Indonesia, namely the Pancasila state foundation and the 1945 State Constitution. [17]

Given the vulnerability of violating the rights and interests of consumers through electronic transactions or digital transactions or *e-commerce*, it is necessary to provide legal protection to consumers. This legal protection, in addition to being regulated in general in the GCPL, is also



specifically regulated and stipulated in Law No. 11 of 2008 concerning ITE and Government Regulation No. 82 of 2012 concerning the Implementation of Electronic Systems and Transactions.

As a form of implementation of several consumer rights and obligations for businesses in addition to those mentioned above, especially the principles of transparency and the right to information, are also stipulated in Government Regulation No. 82/2012, as follows:

1. Electronic Contracts shall contain at least :
 - a. Identity data of the parties
 - b. Objects and specifications
 - c. Electronic transaction requirements
 - d. Price and cost
 - e. Procedure in the event of cancellation by the parties
 - f. Provisions that give the injured party the right to be able to return the goods and/or request a replacement product if there are hidden defects; and
 - g. Choice of law for electronic transaction settlement
2. Business actors are obliged to provide complete and correct information relating to the terms of the contract, producers, and products offered.
3. Business actors must provide clear information about contract offers or advertisements.
4. Business actors are obliged to give consumers a time limit to return the goods sent if they are not following the agreement or there are hidden defects.
5. Business actors are obliged to submit information about goods that have been sent.
6. Businesses cannot burden consumers with the obligation to pay for delivered goods without a contractual basis.

From a civil perspective, the legal protection that can be given to consumers in digital transactions is the material provisions on default or breach of promise which gives the injured party, in this case, the consumer, the right to sue the business actor, namely: a). Cancellation of the agreement; b). Implementation of the agreement; c). Compensation; d). Cancellation of the agreement plus compensation; and; e). Implementation of the agreement plus compensation.

In addition, the provisions of tortious acts mentioned in Article 1365 of the Civil Code in conjunction with Arrest HR dated January 31, 1919, can also be used to protect the rights and interests of consumers in digital transactions or *e-commerce*.

From a criminal perspective, Law No. 11/2008 on ITE has regulated and stipulated the existence of special criminal offenses related to electronic transactions as regulated in Chapter XI Article 45 to Article 52 with a maximum penalty ranging from 6 (six) years to 10 (ten) years.

It is stipulated through Article 44 that the evidence that can be used for investigation, prosecution, and examination in court are:

- a. Evidence as referred to in statutory provisions; and
- b. Other evidence in the form of Electronic Information and/or Electronic Documents as referred to in Article 1 number 1 and number 4 and Article 5 paragraph (1), paragraph (2), and paragraph (3). Electronic Information is one or a set of electronic data, including but not limited to writings, sounds, images, maps, designs, photographs, electronic data interchange (EDI), electronic mail, telegram, telex, telecopy, or the like, letters, signs, numbers, access codes, symbols or perforations that have been processed which have meaning or can be understood by people who can understand them. Meanwhile, Electronic Document is any electronic information created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or similar form, which can be seen, displayed, and/or heard through a computer or electronic system, including but not limited to writings, sounds, images, maps, designs, photographs or the like, letters, signs, numbers, access codes, symbols or perforations that have been processed which have meaning or can be understood by a person capable of understanding them.

CONCLUSION

Electronic contracts in digital transactions that are included in the type of consensual agreement are valid according to the law following Article 1338 jo Article 1320 of the Civil Code and Law No. 11 of 2008 jo PP No. 82 of 2012. Legal protection provided to consumers in a digital transaction or e-



commerce is not only regulated in Law No. 8 of 1999 concerning Consumer Protection but also specifically as a manifestation of several consumer protection principles and the implementation of consumer rights which are the obligations of business actors regulated in Law No. 11 of 2008 and Government Regulation No. 82 of 2012. In addition, as material provisions in general, the provisions of default and tort in the Civil Code can be used. As a form of implementation of legal protection for consumers, business actors should seriously pay attention to the obligations and prohibitions stipulated in the law for them, especially as stipulated in Law No. 8 of 1999 and Law No. 1 of 2008 jo PP No. 82 of 2012 and other related laws and regulations.

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