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The Existence of Consumer Protection in the Perspective of Cyber Law in Indonesia

Fajar Ari Sudewo^{1,2}, Dinar Mahardika²

^{1,2}

Faculty of Law, Universitas Pancasakti

Abstract

The subject matter of this research is about how consumer protection is regulated in cyber law in Indonesia. Legal protection of consumers in buying and selling transactions through electronic media is regulated in Law Number 8 of 1999 concerning Consumer Protection, Law Number 7 of 2014 concerning Trade and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. The type of research used in this research is library research with a normative basis. While the approach used by the author is the statute approach so that the primary source of material is obtained from statutory literature, minutes or official records in making legislation, and judges' decisions. The research results show: First, the need to create a consumer protection system that contains elements of legal certainty. Second, legal protection for consumers in buying and selling transactions through electronic media consists of two concepts of legal protection, namely preventive legal protection and repressive legal protection.

Keywords: Legal Protection, Consumers; Electronic buying and selling transactions

Abstrak

Pokok masalah dalam penelitian ini adalah mengenai bagaimana Perlindungan Konsumen yang diatur dalam Hukum siber di Indonesia Perlindungan hukum terhadap konsumen dalam transaksi jual beli melalui media elektronik diatur dalam Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen, Undang-Undang Nomor 7 Tahun 2014 tentang Perdagangan dan Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik. Adapun jenis penelitian yang digunakan dalam penelitian ini adalah pustaka (library research) dengan basis normatif. Sedangkan pendekatan yang digunakan penulis adalah Pendekatan Perundangan-undangan (statute approach) sehingga sumber bahan primer diperoleh dari literatur perundang-undangan, risalah atau catatan-catatan resmi dalam pembuatan perundang-undangan, serta putusan-putusan hakim. Hasil penelitian menunjukkan: Pertama, perlukannya untuk menciptakan sistem perlindungan konsumen yang mengandung unsur kepastian hukum. Kedua, Perlindungan hukum bagi konsumen dalam transaksi jual beli melalui media elektronik terdiri dari dua konsep perlindungan hukum yaitu perlindungan hukum preventif dan perlindungan hukum represif.

Kata Kunci: Perlindungan Hukum, Konsumen; Transaksi jual beli Elektronik

Introduction

The terms consumer law and consumer protection law have been heard very often. However, it is not yet clear what is included in the material of both. Because of the consumer's weak position, he must be protected by law (Ranto, 2019). Along with the development of society and technology, humans are increasingly using digital technology tools, including in interacting with each other. Almost all economic activities in the world, especially in Indonesia, use internet media and electronic systems. One aspect of this economic activity is in terms of transactions using the internet, known as e-commerce.

✉ Corresponding Author: fajararisadewohukum@gmail.com

Buying and selling transactions through electronic media or e-commerce is one of the forms of trade transactions that are most influenced by the development of information technology. Through this trade transaction, the concept of traditional markets (where sellers and buyers physically meet) has changed into the concept of telemarketing (distance trading via the internet) e-commerce has also changed the way consumers obtain the products they want. Internet technology has a huge influence on the world economy. The internet has brought the world economy into a new phase that is more popularly known as digital economics or digital economy. The internet is no longer a new thing in the phase of technological growth and development. This rapid technological development has brought many changes to the pattern of life of some Indonesian people. The pattern of life occurs in almost all fields, both social, cultural, trade and other fields. In the field of trade, the internet has begun to be widely utilized as a medium of business activity mainly because of its contribution to efficiency.

Information technology (IT) has changed society, has created new types and business opportunities, and created new types of jobs and careers in human work. One of the most developed parts of the information technology field is the internet. Through the internet, people have a wider space to choose products (goods and services) that will be used, of course, with various qualities and quantities that suit their desires. However, there are many obstacles faced in the development of e-commerce as stated by the Director General of Consumer Protection and Trade Order Widodo, that many cases of trading through online sites or electronic commerce (e-commerce) until the end of February 2018, namely, the Ministry of Trade received 34 complaints which were generally from prospective buyers of cellular phones and other electronic products who made online transactions. Furthermore, he said that there are several frauds encountered in online buying and selling transactions. First, the length of time for delivery of goods that are not as

promised. Second, the goods are not in accordance with the provisions. Third, goods cannot be returned if damaged. Fourth, refunds that take a long time.

The problems mentioned above show that buying and selling transactions through electronic media or e-commerce have considerable risks. Especially in the trading system, namely regarding payment, for example, there is a risk arising because the consumer usually has an obligation to make advanced payments, while he cannot see the truth and quality of the goods ordered and there is no guarantee that the ordered goods will be sent as ordered.

This is because in electronic media buying and selling transactions or e-commerce, the parties who carry out transaction activities from the offer by the seller (producer) to the birth of the sale and purchase agreement and its implementation, all use means in the form of electronic data by utilizing internet and computer connection networks. Connection to the internet network as a public network is an insecure connection, so this has the consequence that electronic buying and selling transactions carried out by connecting to the internet are a form of high-risk transactions carried out in an insecure medium. However, the weaknesses possessed by the internet as an insecure public network have been minimized by the application of information encoding technology (cryptography), which is a securitization process by performing an encryption process (with an algorithm formula) so that it becomes cipher / locked data that can only be read / opened by performing a reversal process, namely the previous description process. In addition, the essential weaknesses of the open network that have been stated can actually be anticipated or minimized by the existence of a digital signature security system that also uses cryptography cipher technology. Various obstacles faced in the development of buying and selling electronic media such as infrastructure limitations, the absence of laws (UU), transaction security guarantees and especially human resources can be pursued at the same time as efforts to develop e-commerce institutions.

Consumer protection law is part of the broader consumer law. Az. Nasution, for example, argues that consumer protection law is part of consumer law which contains principles or rules that regulate, and also contains properties that protect consumer interests. Consumer law is defined as the overall principles and rules of law that regulate relationships and problems between various parties with each other relating to consumer goods and or services, in the association of life. (Nasution 1995: 64-65).

Article 1 of Law No. 8 Year 1999 on Consumer Protection (UUPK) regulates consumer protection. However, in reality, the 1999 GCPL does not fully regulate electronic transactions, only a few articles that can be used in electronic transactions. This is what makes the lack of protection for consumers who conduct electronic transactions. Information and telecommunications technology has entered various segments of human activity, both in the political, social, cultural,

and economic and business sectors. In the field of trade, technology can also be utilized as a medium for business activities, especially because of its contribution to efficiency. Although it poses risks, ignoring the development of technological capabilities will have a negative impact in the future, so openness, proactivity and anticipation are alternatives that can be chosen in dealing with the dynamics of technological development. This is because Indonesia has in fact become part of the global e-commerce market. Because buying and selling activities through electronic media or e-commerce often experience a lot of fraud that harms consumers, therefore rules are needed that can provide legal protection to consumers. Guarantees of legal certainty for consumers in conducting electronic media buying and selling transactions are needed to foster consumer confidence.

In the Civil Code there is no clear mention of the momentum of electronic buying and selling or contracts. Article 1320 of the Civil Code only states that the consensus of the parties is sufficient. According to Mariam Darus Badruzaman (Badruzzaman, 2005: 24), in various literatures there are four theories that discuss the momentum of the contract, namely:

- a. The will theory (*wilstheorie*), teaches that an agreement occurs when the recipient's will is expressed, for example by writing a letter.
- b. Delivery theory (*verzendtheorie*), teaches that an agreement occurs when the expressed will is sent by the party receiving the offer.
- c. Knowledge Theory (*vernemingstheorie*), teaches that the offering party should have known that his offer was accepted.
- d. The theory of acceptance (*vertrowenstheorie*), teaches that the agreement occurs when the expressed will is deemed worthy of acceptance by the offeror.

Research Problems

Based on the background of the problem above, this research focuses on: *First*, how the form of legal protection for consumers from the perspective of cyber law in Indonesia; *Second*, law enforcement in the process of consumer protection in electronic transactions.

Research Methods

In conducting this research, the method used is the normative juridical approach method when examining data in examining library materials or secondary data as the main research material and comparative studies. This research will be conceptualized in accordance with what is stated in the laws and regulations that act to become norms and rules in the benchmark of human behavior to be considered appropriate in social life. Secondary data is collected through document studies of primary, secondary and tertiary legal materials.

The data that has been collected is analyzed through a qualitative normative method to describe the data systematically. The results of this qualitative data processing are in the form of conclusions to answer the identification of problems in finding legal certainty in consumer protection of electronic transactions.

Discussion

1. Characteristics and scope of electronic transactions

Based on the results of the research, it is known that the mechanism of electronic transactions is unlike conventional buying and selling transactions because every electronic transaction begins with an offer stage through internet media by business actors, an acceptance stage by consumers, an agreement stage between the parties, a payment stage through banking services, and ends with the delivery stage of the ordered product through expedition services. In practice, Law Number 9 Year 1999 on Consumer Protection (UUPK) has not fully protected consumers in electronic transactions.

This condition is because the GCPL has not regulated the further implementation of the notion of consumer protection which includes online consumer protection, the right to information that must be provided to consumers through online media to prevent fraudulent acts, misuse of payment cards belonging to others, the responsibility of business actors which includes the responsibility of ISPs (Internal Service Providers), electronic burden of proof, and dispute resolution through information technology facilities. Regarding the issue of dispute resolution in electronic transactions, there is a tendency to choose an arbitration forum.

An agreement is merely an agreement recognized by law. This agreement is the main interest in the business world, and is the basis of most trade transactions (Muhammad 2006: 93). An agreement that is declared valid is an agreement that fulfills the four conditions contained in Article 1320 of the Civil Code, namely:

- a. There is an agreement between the two parties;
- b. Capacity to perform legal acts;
- c. The existence of a specific object, and
- d. The existence of a lawful cause.

Electronic commerce (e-commerce) determines the agreement between the parties expressed directly using the internet media. Parties can agree by selecting the agree button on the internet agreement or directly sending confirmation of their agreement via e-mail. The agreement in an e-commerce contract is different from an ordinary contract which is generally agreed by affixing a joint signature. The agreement in e-commerce contract is stated electronically as well. In an interview with Mariam Darus Badrulzaman regarding electronic consent it was said that: "by

selecting the agree button or confirming the agreement by e-mail, the parties have agreed" (Jun Cai 2002: 45).

Ciri dari perdagangan yang dilakukan melalui media elektronik sebagai berikut (Badruzaman dkk, 2004: 287):

- a. Mode of Communication. Both parties should note that the site to provide information for inappropriate (illegal). In most agreements with internet service providers or in standard agreements there are clauses for clients not to use sites that violate public order, violate works protected by intellectual property laws, make misleading announcements, distribute prohibited documents, act against relevant international regulations.
- b. Warranty and *vrijwaring*. That the contract must state the guarantee that must be made by the website developer or the work created which must be free from plagiarism, pay attention to intellectual rights and not violate existing legal provisions.
- c. Fees. The parties can make an agreement that the obligation to pay compensation is carried out by risk sharing.
- d. Payment. Regarding the price and method of payment, whether it is a lump sum payment, credit, or based on a certain amount of tasks that have been completed.
- e. Confidentiality. In this case, it is necessary to ensure that the developer is bound to maintain the confidentiality of all information contained in the contract/agreement.
- f. Links to intellectual property rights. The ownership of the software to create and design the website is linked to the intellectual property regulations used.
- g. Announcement. In order for the website to have the ability to transcend national jurisdictional boundaries therefore international contracts that occur in e-commerce must contain choice of law.
- h. Mixed Agreement. A trade contract is a mixed agreement, meaning that it contains freedom of elements recognized by the Civil Code, including: 1) Sale and purchase agreement 2) Evidence agreement 3) Lease 4) Power of attorney 5) License.

2. Business and consumer agreements in electronic transactions

An agreement that is declared valid is an agreement that fulfills the four conditions contained in Article 1320 of the Civil Code, namely:

- a. There is an agreement between the two parties;
- b. Capacity to perform legal acts;
- c. The existence of a specific object;
- d. The existence of a lawful cause

The first and second conditions above are called subjective conditions, if one of the two conditions cannot be fulfilled, the agreement can be canceled, while the third and fourth conditions are objective conditions, so if one of the two conditions is not fulfilled, the agreement is null and void (Ibrahim & Lindawaty 2005: 44).

This agreement is regulated in Article 1320 paragraph (1) of the Civil Code, namely the conformity of statements of will between one or more people with other parties, statements of will between two or more people with other parties. There are five ways in which a statement of will can occur, namely:

- a. Perfect language and writing;
- b. Oral perfect language;
- c. Imperfect language as long as it is acceptable to the opposing party, because in reality often someone conveys with imperfect language but is understood by the opposing party;
- d. Sign language as long as it is acceptable to the other party;
- e. Silence or silence, but understood or accepted by the opposing party.

Basically, the most common way done by the parties, namely with perfect language orally and in writing. The purpose of making an agreement in writing is to provide legal certainty for the parties and as perfect evidence, if a dispute arises in the future (Salim H.S. 2004: 33).

The e-commerce process determines that the agreement between the parties is expressed directly using the internet media. The parties can agree by selecting the agree button on the internet agreement or directly sending confirmation of their agreement via e-mail. The agreement in an ecommerce contract is different from an ordinary contract which is generally agreed by affixing a joint signature. The agreement in an e-commerce contract is also stated electronically.

3. Law enforcement in the process of consumer protection in electronic transactions

Consumer protection is all efforts that ensure legal certainty to provide consumer protection in order to realize the objectives of consumer protection in Indonesia (Endang Sri Wahyuni 2003: 91). The existence of the Consumer Protection Law has a positive economic impact on the business world, the business world is encouraged to improve the quality of goods and services so that its products have a competitive advantage at home and abroad.

In Indonesia, the ITE Law states that electronic transactions can be outlined in an electronic contract. In the electronic contract, it can be

determined which choice of law is used in resolving disputes (dispute). If the choice of law is not made, then the applicable law is based on the principles of international civil law. Likewise with the choice of which court forum is entitled. The parties to an e-commerce transaction can determine which court forum, arbitration, or other alternative dispute resolution institution is chosen in the e-contract. And if no forum selection is made, then dispute resolution will return to the principles in International Civil Law.

Dispute resolution methods can be pursued in the event of a dispute or conflict that stems from a difference of opinion or incompatibility between the parties. If the parties do not succeed in finding the right form of settlement, then this difference of opinion can have an adverse effect on the continuity of the relationship between the two. Therefore, every time they face a difference of opinion (dispute), the parties always try to find appropriate ways to resolve it. This issue cannot be resolved by efforts at the national level, and if there are people who take legal action, they are only required to calculate the losses suffered. Meanwhile, proving the cause of accidents and mistakes that occur is the responsibility of business actors (<http://hukumpositif.com>).

The provisions of Article 23 of the GCPL states that business actors who refuse and/or do not provide and / or do not fulfill compensation for consumer demands can be sued through the Consumer Dispute Resolution Agency (BPSK) or submit to the judicial body at the consumer's domicile. Settlement of consumer disputes can be pursued through the court or out of court based on the voluntary choice of the parties to the dispute (Article 45 UUP). So that if there is a dispute / conflict between business actors and consumers in a trade, there are several ways that can help resolve disputes between business actors and consumers, the dispute resolution process is: a. Through court channels

Litigation (through court channels) will generally create an atmosphere of hostility that can be prolonged for the litigants, litigation for economic actors or the international business community also has other impacts, for example regarding different legal systems, determination of the place of litigation, poor business relations and questions regarding enforcement and implementation of decisions. In addition, litigation also requires time, costs, coupled with technical reasons, namely the accumulation of the number of cases in court, so alternative opportunities for dispute resolution are needed (Sirait, 2008).

Disputes in Indonesia and also other countries that are submitted through the court (litigation) have several weaknesses, including (Ramli, 2004: 56): 1)

- 1) litigation forces the parties into an extreme position requiring a defense;
- 2) litigation raises all the issues in a case, thus encouraging the parties to investigate the weaknesses of the other party;
- 3) litigation is time consuming and expensive; and
- 4) judges often act impartially and do not keep abreast of the science underlying the resolution of new legal issues.

In Indonesia, the ITE Law states that electronic transactions can be outlined in an electronic contract. In the electronic contract, it can be determined which choice of law is used in resolving disputes (dispute). If the choice of law is not made, then the applicable law is based on the principles of international civil law. Likewise with the choice of which court forum is entitled. The parties to an e-commerce transaction can determine which court forum, arbitration, or other alternative dispute resolution institution is chosen in the e-contract. And if no forum selection is made, then dispute resolution will return to the principles in International Civil Law. The choice of law in commercial contracts has always been controversial. Research shows that consumers are generally reluctant to litigate, especially if the costs incurred are greater than the possible results to be obtained. This is also the case in e-commerce transactions. In ecommerce transactions, the characteristics of cases that arise in consumer protection are more complex than in real transactions. Jurisdiction and evidentiary issues can be obstacles and considerations for consumers to file a lawsuit.

In Indonesia, the process of examining disputes in electronic commerce conducted online through arbitration institutions has not been implemented thoroughly. An examination process is said to be comprehensive if the entire process is carried out online, starting from the selection of an institution that specializes in providing Online Alternative Dispute Resolution services, the arbitration agreement, procedural procedures, to the delivery of the decision is also carried out online. Law No. 30/1999 on Arbitration and Alternative Dispute Resolution provides the possibility of using e-mail in the dispute resolution process, even though it is only at the stage of submitting letters. This can be seen in Article 4 Paragraph (3) of Law Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution which reads: "In the event that the agreed dispute resolution through arbitration occurs in the form of an exchange of letters, the delivery of telex, telegram, facsimile, e-mail or in the form of other means of communication, shall be accompanied by a record of receipt by the parties." In the event that an e-commerce consumer dispute occurs in Indonesia, consumers can utilize the role of the Consumer Dispute Resolution Agency (BPSK).

If we look at the regulations governing claims in consumer disputes, it can be said that dispute resolution through BPSK will be faster than if the dispute is brought to litigation (court). Although the binding and final nature of BPSK's decision can in theory be submitted to the District Court and Supreme Court.

Conclusion

Consumer protection guarantees legal certainty for consumers who feel harmed so that the objectives of consumer protection can be realized, if there is a dispute or conflict between business actors and consumers, it can be resolved through: Litigation and Non-litigation.

Electronic commerce is a transaction model with different characteristics from conventional trade. Its reach is not only local but also global so that in electronic transactions or e-commerce if there are problems, you can use the instruments of the Electronic Information and Transactions Law and Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions.

Suggestion

Dengan semakin berkembangnya praktik transaksi dagang melalui sistem elektronik dan semakin kompleksnya permasalahan yang muncul dari hubungan hukum tersebut, maka Pemerintah perlu lebih menggiatkan sosialisasi dan pembinaan terkait hak dan kewajiban konsumen transaksi dagang melalui sistem elektronik, sehingga konsumen dapat bersikap cerdas dalam melakukan transaksi dagang melalui sistem elektronik. Pada sisi regulasi pemerintah perlu segera membentuk regulasi mengenai transaksi dagang melalui sistem elektronik yang mampu memberikan perlindungan hukum dan kepastian bagi para pihak. Disamping itu UU Perlindungan Konsumen perlu direvisi untuk merespon kebutuhan masyarakat mengenai jaminan perlindungan hukum atas hak-haknya selaku konsumen dalam transaksi dagang melalui sistem elektronik, antara lain berkaitan dengan 24 SULASI RONGIYATI: Pelindungan Konsumen dalam Transaksi Dagang Melalui Sistem Elektronik tanggung jawab pelaku usaha yang mencakup tanggungjawab Internal Service Provider dan penyelesaian sengketa secara online (online dispute resolution).

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