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Consumer Legal Protection Against Default in Buying and Selling E-Commerce

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Abstrak: *Introduction: E-commerce is a modern business activity that has two properties: not meeting the parties directly (nonface) and without the need for a genuine signature by the non-signing parties. Methodology: Type of research using normative juridical research. This study used two approaches: a state approach and a conceptual approach. The primary and secondary data are sourced by qualitative methods of data analysis and the presentation of descriptive data analysis. Results and Discussions: Act No. 19 of 2016 on ITE explains that E-commerce transactions are included in responsible transactions. The legal form of protection is listed in Article 28 (1). The settlement of E-commerce transactions in dispute is carried out using peaceful means. If the line is ineffective, the consumer may sue the owner in accordance with the contents of Article 45 of the Constitution. Conclusion: Consumer law protection has two concepts: preventive and repressive legal protection. Efforts can be completed through litigation or processing of adaptation, negotiation, mediation, conciliation and arbitration)*

Keyword : *Legal Protection; Consumer; E-commerce Transactions; Wanprestasi.*

INTRODUCTION

As time goes by that has entered the digital era, making humans unable to avoid the advances in technology that develops more rapidly. The form of technological advances here is more visible in the advancement of information and communication technology that has a result of social change. Information technology is considered to have brought changes to society, creating types and various opportunities about a business and bringing up the many types of new work/careers in human work (Sjahdeini, 2001).

The internet in business activities is basically used as a medium of information and also electronic communication. In the past business activities are often carried out in a very

simple way. The business activity involves the existence of owners and consumers who meet directly. It is unfortunate that in the present it has begun to switch into digital form, where the transaction activity for business can be done online using mobile phones that have been connected with the existence of an internet network (Devi & Priyanto, 2021).

Almost all economic activities in Indonesia have adapted and experienced displacement using internet media as an intermediary system. One aspect of this economic activity is the ongoing transaction activity with the internet or often known as e-commerce (Bintoro, 2011). E-commerce is a modern business activity which has 2 (two) its own traits including not meeting the parties directly or often known as nonface and without requiring the original signature by the parties or often known as non-sign. (Geriya, Sutarna, & Priyanto, 2016)

This e-commerce usually can often be accessed through various electronic sites such as WhatsApp, Facebook and Instagram. The many online shopping sites that are widely known by the community such as Shopee, Lazada, Blibli, Tokopedia and Bukalapak which from the site the community can easily find items to meet their various needs by not requiring them to come directly to their shops (Umboh, 2020).

Law No. 19 of 2016 concerning Information and Electronic Transactions (ITE) also regulates e-commerce. The definition of e-commerce transactions has been explained in Article 1 paragraph (2) of Law No. 19 of 2016 which reads "E-Commerce transactions are legal actions carried out using computers, computer networks, and/or other electronic media". Regarding the existence of Law No. 19 of 2016, it cannot pay attention to the development of the rules contained in the Civil Code.

Helps meet the needs of the community in the rapid era of technological developments, because basically the e-commerce transaction is carried out this media used is the internet media, so an agreement on the agreement made is also through the internet (Makarim, 2004). Online buying and selling agreement can be said to be valid if it meets the existence of 2 (two) conditions, namely subjective and objective requirements. Both conditions if it has been met, it can be said that an agreement that has been made will be valid and can bind the parties for the fulfillment of their rights and obligations. One party can certainly experience disputes and problems, so to be able to solve these problems can be based on agreements that have been agreed upon jointly.

E-commerce transaction activities certainly give rise to an offer and request activity on an item carried out online. This transaction also caused the emergence of a new problem such as the existence of default carried out by one of the parties who had a connection in the e-commerce (Wardhana, 2019).

Problems that arise from a sense of trust by buyers can make the buyer feel benefited or disadvantaged. The buyer will feel benefited if the item ordered is in accordance with his request. The buyer will also feel disadvantaged if the desired goods are not appropriate and have shortcomings. This is what often happens between business actors/owners with

consumers, where consumers have the right to be able to get a product that has high quality and in accordance with what has been promised by the owner.(Wardhana, 2019)

This e-commerce transaction needs to get a proper and sufficient protection and legal certainty so that the rights of the parties involved can be guaranteed. The government here is expected to form various legislation with the aim of providing legal protection for consumers. Legal protection here is considered as one of the important things in the sustainability of e-commerce transactions. Rights and obligations or various things that arise because they have a connection with the law are required to obtain a proper protection from the law itself. Legal protection is required to be able to guarantee certainty about the rights and obligations of a person in the eyes of the law(Lestarini & Putra, 2019).

Based on the background description above, the main problems in writing this research are how the legal protection for consumers in e-commerce transactions on the default events conducted by the owner in terms of Law No. 19 of 2016? And how is the effort to resolve the law related to the existence of default by the owner of consumers according to Law No. 19 of 2016? Furthermore, the main objective in writing this research is to study and analyze more deeply related to legal protection for consumers related to the existence of default by the owner in e-commerce transactions in terms There was a default by the owner of consumers according to Law No. 19 of 2016.

RESEARCH METHODE

The preparation of this article uses normative juridical legal research using 2 approaches, including statutory approaches and conceptual approaches. The legislation approach is an approach carried out by studying all laws and regulations relating to legal issues to be examined.

Legal issues here refer to legal protection against consumers for the existence of default events in e-commerce buying and selling transactions. Conceptual approach (conceptual approach) is an approach that develops from the existence of several views or doctrines in a legal science, where this approach focuses on the analysis of statutory regulations which are used as the main sources assisted by the existence of several legal theories, legal concepts and a significant legal principle.

The type of research used is by conducting literature research (documents). The data analysis method that the authors use in this study is a qualitative data analysis method. The author selects and collects data that has been obtained and associated with various literature that the authors use while still paying attention to the legal theory contained in the legislation that has a relationship with the problem to be studied.

DISCUSSION

A. Legal Protection For Consumers In E-Commerce Transactions For Default Events Conducted By The Owner In Terms Of Law No. 19 Of 2016.

Sub-The ongoing e-commerce transaction activities in the community often raises disputes arising from the existence of default events between consumers and sellers. The occurrence of default here certainly has its own consequences including:

- a. The existence of an engagement, creditors can demand debtors if an achievement is late to be met. Creditors have the right to prosecute compensation on the grounds that the creditor can benefit when the debtor meets the achievements in accordance with the time given
- b. The debtor is required to make compensation payments to the creditor (Article 1243 of the Civil Code)
- c. The burden of risk is the loss received by the debtor when after the debtor default, with an exception of errors owned by the creditor. The debtor is not justified to hold on to a forced condition
- d. An agreement that has a reciprocal relationship gives rise to an engagement, where this makes the creditors raise themselves from their obligations to provide a counter achievement in accordance with Article 1266 of the Civil Code(H.S, 2003).

According to Subekti in his book which discusses the law of agreement, explaining that default is a form of negligence or negligence consisting of 4 (four) conditions, namely(Subekti, 2010): not implementing what has been agreed but carried out, carrying out things that have been promised but not in accordance with that promised, carrying out what has been promised but not time and implementing something based on the agreement should not be carried out.

E-commerce buying and selling transactions are generally almost the same as direct sale and purchase transactions. Likewise with consumer legal protection in e-commerce buying and selling transactions is also almost the same as the law that has been running directly. Legal protection is interpreted as a form of protection aimed at a person's interests protected by law. Satjipto Raharjo argues that "Legal Protection is to provide guidance to human rights that are harmed by others and the protection is given to the community so that they can enjoy all the rights given by the law"(Raharjo, 2000). Legal protection applied in e-commerce transactions can consist of protection and obligations as the right of a consumer.

The concept of legal protection for consumers is divided into 2 (two), namely preventive and repressive legal protection. Efforts to protect preventive and repressive laws are ways that can be used in solving electronic transaction problems(Kirana, Westra, & Indrawati, 2019). Preventive legal protection is a form of protection aimed at the community in order to prevent problems. The form of prevention in question is with the guidance and supervision of consumers. Philipus M. Hadjon argues that "repressive legal protection is a form of legal

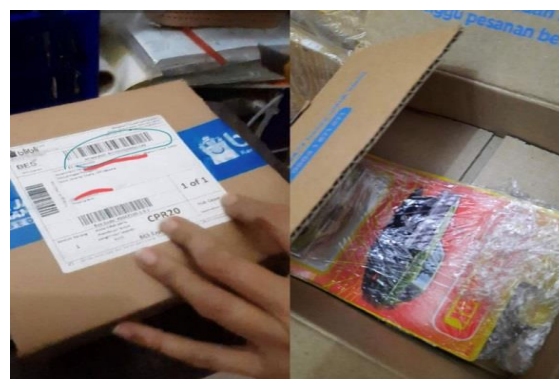
protection which is more demonstrated in dispute resolution"(Hadjon, 1987). The form of this protection can be completed by litigation paths and non -litigation paths.

Consumer legal protection in e-commerce transactions can be applied with 2 (two) types of regulations, including legal protection in the form of certain laws (laws, government regulations) that are general in nature and legal protection based on special agreements formed by the parties, Usually it can be in the form of substance or content of agreements from the consumer and business actors, such as the provisions that discuss the existence of compensation, the period of claim submission, dispute resolution and so on.(Sukarni, 2007)

Based on Law No. 19 of 2016 concerning Information and Electronic Transactions, e-commerce transactions are one type of transaction that can be accounted for. The statement of agreement in the purchase of goods online is done by clicking the recipient agreeing on the agreement in the transaction. This acceptance action begins with a sign of approval regarding the terms and conditions of electronic buying and selling or often referred to as electronic contracts.

One example of the illustration of the case of default in the sale and purchase in e-commerce is as follows: On December 6, 2022, Eli Hotman (consumers) bought a Samsung Galaxy M32 (6/128GB) for ± Rp2.5 million at the Samsung Official Store is on blibli.com. December 6, 2022 ordered goods have entered the warehouse and have not been sent. Then dated December 8, 2022 the order was only sent, and when the package arrived and opened, the package contained toys, not the cellphone he ordered. Even though the condition of the box was sealed, there was a blue soil from Blibli and on the front there was a shipping receipt with the consumer name. Eli Hotman (consumers) felt disadvantaged by Blibli because he had spent Rp2.5 million, but did not get the cellphone in accordance with the orders the consumer wanted(Hotman, 2022).

Figure 1. Purchase of HP that comes toys



It is clear that the incompatible goods ordered with the goods received are a form of default event. According to Law No. 8 of 1999 concerning Consumer Protection or often known as the UUPK has been strictly prohibited from Article 8 paragraph (1) letter f which explains that

"Business actors are prohibited from producing or trading not in accordance with the promises stated in the label, etiquette, information, advertising or promotion of sales of goods and/or services". Consumers who suffered losses due to the act of the owner/business actors who did not keep the agreement as agreed upon before, referring to Article 45 paragraph (1) of the UUPK can make a lawsuit against business actors assisted by institutions that have the task in terms of dispute resolution between consumers and perpetrators business or resolved through the court in the general court or often known as litigation (Zulham, 2016).

Law enforcement in consumer protection also requires the implementation of principles that can be used as a foundation for establishing a law. The rules regarding the implementation of the principles as listed in the legislation include consumer protection based on the benefits, justice, balance, security, and consumer safety and legal participation. (Ranto, 2019)

The owner/business actor when conducting a transaction regarding an item and service is required to continue to provide the truth and clarity of the state information from an item he sells. This rule has been explained in UUPK precisely Article 7 letter b which contains "Providing correct, clear and honest information about the conditions and guarantees of goods and/or services and provides an explanation of the use, improvement and maintenance".

The e-commerce transaction activity, in the UUPK there are also aspects of the legal protection of consumer regarding actions that are not allowed for business actors and responsibilities owned by business actors. Article 8-17 UUPK has regulated aspects of action that are not allowed for business actors. This aspect can be used if there is proof of an item and/or service that is traded violates the rules. In connection with the same thing, it also prohibits the existence of an advertisement that is considered to be misleading/fooling consumers, as if the goods and/or services that are being offered have good conditions but in fact it turns out not. (Nasution, 2001)

Article 19-28 UUPK has also regulated the existence of aspects of responsibility applied to business actors, when the goods have been received by consumers but the goods are different from what has been promised. This disadvantage is caused by incorrect information provided by the owner/business actors in promoting a product/service product. Consumers are entitled to receive compensation for the losses that are natural as the provisions of Article 4 letter h, namely "Consumers have the right to get compensation for compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or not as it should".

Law No. 7 of 2014 concerning Trade has provided protection to consumers when electronic buying and selling or e-commerce activities have taken place. Regarding this matter, it has been explained in Article 65, namely "regulating data/information provided by online business". Here it means that business actors in conducting e-commerce transactions are

required to provide truth and completeness of information. Law No. 11 of 2008 concerning Information and Electronic Transactions as amended by Law No. 19 of 2016 concerning Amendments to Law No. 11 Year 2008 concerning Information and Electronic Transactions including the main legal basis used in the sale and purchase transaction with Electronic media intermediaries.(Ranto, 2019)

Legal protection for consumers normatively has been explained in Law No. 19 of 2016 concerning Information and Electronic Transactions(Muhammad, n.d.):

1. He admitted that a transaction, information, documents and electronic signatures while still paying attention to the law of engagement and its proof, then the legal certainty of the e-commerce transaction to take place is guaranteed.
2. Classification of actions included in a violation of the law for misuse of technology and information by including criminal sanctions
3. Information and electronic transactions are applied to all people who carry out legal actions, both the person in the territory of Indonesia or outside the territory of Indonesia. So that the scope of the Information and Electronic Transaction Law is not only local but can be international.

The relationship with consumer rights has been explained in Article 4 letter c of the UUPK that "consumers are entitled to get correct and clear information about the products sold by business actors". Law No. 11 of 2008 concerning Information and Electronic Transactions as amended by Law No. 19 of 2016 concerning Amendments to Law No. 11 Year 2008 concerning Information and Electronic Transactions regulates this matter, precisely Article 9 which reads that " Business actors offering products through electronic systems must provide complete and correct information related to contract requirements, producers, and products offered ". The provisions of Article 9 provide consumer rights in order to receive completeness and amplification of an information about goods that have been promoted by business actors when the sale and purchase transaction activities with the intermediary of electronic media takes place.(Ranto, 2019)

Consumer Legal Protection In the ongoing electronic buying and selling transactions contained in Law No. 19 of 2016 concerning Amendments to Law No. 11 Year 2008 concerning Information and Electronic Transactions precisely Article 28 paragraph (1) namely "Everyone intentionally and without rights spreading false and misleading news that results in consumer losses in electronic transactions ". Regarding criminal sanctions used if there is a violation explained in Article 28 paragraph (1) and the provisions are contained in Article 45 A paragraph (1) which reads "Any person who intentionally and without the right to spread false and misleading news that results in losses of consumers in Electronic transactions as referred to in Article 28 paragraph (1) are sentenced to a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah) ".

Steps in order to prove this can use electronic evidence and/or printouts for the expansion

of evidence contained in Article 5 paragraph (2) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, in addition to It can also use other conventional evidence in accordance with the Criminal Procedure Code (KUHAP). If the business actors do not have a good faith in the default incident they have made, consumers can carry out lawsuits to the business actors using Article 38 paragraph (1) and Article 39 paragraph (2) of Law No. 11 of 2008 concerning Electronic Information and Trax which explains that "Consumers can also complete their disputes through arbitration or other alternative dispute resolution institutions in accordance with statutory provisions".

Electronic buying and selling transactions or e-commerce certainly requires the principle of infrastructure security such as guarantees of the truth of the identity of business actors or consumers, safety of payment gateway, security and sophistication of the website used has not become a point of attention for business or consumers. The number of symptoms that arise for this e-commerce transaction can be seen by the number of reports regarding complaints for fraud that are included in the realm of the police or investigators of the Ministry of Communication and Information. This situation is required to be more selective when conducting e-commerce transactions and still prioritizes the existence of security or caution as the most important consideration

B. Efforts To Resolve The Legal Related To The Existence Of Default Carried Out By The Owner Of Consumers According To Law No. 19 Of 2016

Default is included in matters classified as a phenomenon of violence, all parties are required to avoid various causes that can cause default. As a result of the tentuna default incident it causes losses to consumers when the goods purchased are not the same as what has been promised, so that businesses are responsible for incidents of incompatibility of goods purchased by consumers. This rule has been explained in Law No. 8 of 1999 concerning Consumer Protection precisely in Article 19 which discusses accountability for business actors such as providing compensation costs regarding damage, pollution and losses experienced by consumers because they have used the goods or services produced . The deadline used in terms of the latest compensation is 7 (seven) days after the transaction date(Sidabalok, 2014).

The main resolution efforts suggested by the issue of default by the peaceful path are often called mediation. This settlement is carried out by not including a particular body/court while continuing to refer to a statutory regulation. Through a peaceful path, it is expected that guilty parties can recognize their mistakes and provide compensation costs, this includes a form of responsibility for the violations it committed. Peace/mediation can be carried out through the court or outside the court. In court using a mediator certified judge Meanwhile, for those who are outside the court, they can use certified independent mediators issued by the Official Mediation Agency.(Wijaya, I & Purwanto, 2019)

Efforts to resolve the law in addition to peaceful or mediation can also be completed using efforts to resolve the litigation path. Settlement of the Litigation Pathway Problem The provisions are contained in Law No. 8 of 1999 concerning Consumer Protection, namely in Article 45 paragraph 1 of the UUPK "Every hardened consumer can sue business actors through the institution in charge of resolving disputes between consumers and business actors or through the justice that General Justice Environment ".

Then emphasized again in Law No. 11 of 2008 concerning Information and Electronic Transactions as amended by Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions precisely in Article 38 which reads "each People can file a lawsuit against those who carry out electronic systems and/or use information technology that results in detrimental to the community, in accordance with statutory provisions ".

Article 39 paragraph (1) which reads "Civil lawsuit is carried out in accordance with the provisions of the legislation". Article 39 paragraph (2) also explains that "In addition to the settlement of the civil guagatan as referred to in paragraph (1), the parties can resolve disputes through arbitration, or other alternative dispute resolution institutions in accordance with the provisions of the legislation".

In addition to litigation resolution efforts, the problem of the occurrence of default that occurs in e-commerce can also be done by non-litigation. Solving non -litigation path problems include the process of adaptation, negotiations, mediation, counseling and arbitration. The adaptation process occurs because of the agreement of the two parties as this explanation is contained in the electronic sale and purchase agreement. The negotiation process is carried out by the parties who are directly related and representative by each party. The mediation process is carried out with a third party intermediary and without interference with the decisions agreed upon by both parties. The Conciliation process is almost the same as in court where there are parties who are used as pseudo judges. The arbitration process is carried out with the help of the arbiter selected by the parties according to their fields.(Raditio, 2014)

Problem solving using non -litigation paths can be resolved with the help of the Consumer Dispute Settlement Agency (BPSK). BPSK institutions are one of the bodies that have the task of handling and solving a problem that occurs among business actors/owners and consumers. BPSK institutions are included in public bodies that are exclusive in exercising judicial power, especially in the field of consumer protection.

The duties or authority possessed by BPSK when they want to solve the problems that occur between consumers and business actors are listed in Article 52 of Law No. 8 of 1999 concerning Consumer Protection. With the existence of BPSK, the problem solving experienced by consumers can be implemented quickly, easily and cheaply. Fast because BPSK is required to give a decision within 21 working days as contained in the law. Easy

because of the simplicity of the administrative process and decision taking made by BPSK. Cheap because of the cost of a case(Nugroho, 2011).

CONCLUSION

The occurrence of default events experienced by consumers in e-commerce transactions requires a form of legal protection. The form of consumer legal protection here is contained in Article 28 paragraph (1) by looking at the provisions of Article 45 A paragraph (1) of Law No. 19 of 2016 concerning Amendments to Law No. 11 Year 2008 concerning Information and Electronic Transactions. The concept of consumer legal protection in e-commerce buying and selling transactions consists of 2 concepts, namely preventive and repressive legal protection. Preventive legal protection is carried out by providing guidance and supervision of consumers in accordance with the sound of Article 29 and Article 30 of the UUPK. Repressive legal protection is a form of protection that is aimed at the process of resolving a dispute.

Efforts that can be made to resolve the law for the existence of a default event in electronic buying and selling transactions or e-commerce can be resolved using efforts to resolve the litigation path, namely by conducting a lawsuit as described in Article 38-39 Law No. 11 of 2008 concerning Information and Electronic transactions as amended by Law No. 19 of 2016 and non-litigation, namely the completion of the Sejeketa through the process of adaptation, negotiation, mediation, counseling and arbitration

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