

# CONSUMER PROTECTION IN ONLINE BUYING TRANSACTIONS

Muhammad Fadlan<sup>1</sup> & Aulia Muthiah<sup>2</sup>

<sup>1</sup>School of Law,

Sultan Agung Islamic University, Indonesia

<sup>2</sup>School of Law,

Universitas Achmad Yani Banjarmasin, Indonesia

<sup>1</sup> [fadlanreds@gmail.com](mailto:fadlanreds@gmail.com) & <sup>2</sup> [auliamuthiah@gmail.com](mailto:auliamuthiah@gmail.com)

## Abstract

*Classic problems that still often occur in cases of buying and selling online are when the quality of the goods ordered does not match what was promised by the business actor, the images seen by consumers do not match reality, the delivery time is late, and the goods are damaged when they arrive at their destination. . These problems are essentially the risks of buying and selling online. It becomes a problem when business actors cannot be contacted by consumers who ask for their rights to be fulfilled perfectly. So that consumers are harmed as a result of irresponsible business actors.*

*As for the results of this study, the sale and purchase agreement is a reciprocal agreement that gives birth to rights and obligations for the parties, namely business actors and consumers. This sale and purchase agreement was born due to the meeting of the will of business actors and consumers, then they agreed on products and prices. The consequence of the sale and purchase agreement is the transfer of ownership of the goods and payment of the price of the goods.*

*The principle of consumer protection in online buying and selling transactions refers fully to the UUPK, so that in its application it can use the principle of responsibility based on the element of error/negligence. and also the principle of absolute responsibility (strict liability). In principle, these two methods aim to provide protection to consumers, especially in online transactions made with internet media.*

**Keywords: Sell, Buy, Transaction, Consumer, Protection**

## Introduction

Currently there are two business models that can be done to transact. First, conventional business which refers to traditional types of transactions where business actors and consumers must meet each other, face to face and talk to each other to bargain prices. Second, online business where this business refers to electronic media as a tool for transactions. This business model does not need to meet each other between business actors and consumers. It is enough to interact with mobile phones that are connected between business actors and consumers. Each of these business models has different ways, problems and legal consequences.

The second business model in the form of buying and selling online has become a trend during the Covid-19 pandemic. The government's policy to limit activities outside the home is one of the reasons for online transactions as a solution to meet daily needs. Businesses with marketing techniques by using digital marketing are also a solution for business actors to maintain the businesses they have managed so far.

Online transactions change human behavior and human relations techniques. Changes in the behavior of a seller and a buyer when transacting online will not change the essential law of buying and

selling. The sale and purchase agreement between the seller and the buyer refers to the prevailing norms in Indonesia. Based on the legal rules, the sale and purchase agreement will still give birth to the rights and obligations of the parties. Supporting provisions related to the legal terms of the agreement must also be an absolute support even if transactions are carried out online.

New habits (new normal) due to the Covid-19 pandemic cannot change the essential law of buying and selling between sellers and buyers. The implementation of achievements must still be considered, when obligations are not carried out in accordance with the agreement of the parties, then the rules of default should be implemented.

Classic problems that still often occur in cases of buying and selling online are when the quality of the goods ordered does not match what was promised by the business actor, the images seen by consumers do not match reality, the delivery time is late, and the goods are damaged when they arrive at their destination. . These problems are essentially the risks of buying and selling online. It becomes a problem when business actors cannot be contacted by consumers who ask for their rights to be fulfilled perfectly. So that consumers are harmed as a result of irresponsible business actors.

Regarding the protection of consumer rights, it has actually been regulated in Law Number 8 of 1999 concerning Consumer Protection (UUPK), while online buying and selling transactions or e-commerce are regulated in Law Number 19 of 2016 concerning Amendments to Law No. Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE). The two laws serve as legal umbrellas for business actors and consumers who transact online, but in their daily practice some business actors ignore the regulatory orders of the two laws. It could be due to lack of education or caused by business actors who do take advantage of online buying and selling to deceive consumers, in order to get more profits.

## **Method**

In this case, the author uses normative legal research methods, which are legal research conducted by researching and using legal materials, namely primary legal materials, secondary legal materials, tertiary legal materials obtained from library research. This research also uses a statutory approach and a conceptual approach.

## **Discussion / Results and Discussion**

### **Buying and Selling Products with Electronic Commerce**

Electronic Commerce transaction system or commonly abbreviated as E-Commerce is when the seller (seller) does not meet directly (face to face) with the buyer (consumers). The general definition of E-Commerce is all forms of trade/commerce transactions of goods or services (trade of goods and services) using electronic media that are connected online.<sup>1</sup>

The World Trade Organization (WTO) explains the scope of e-commerce coverage which consists of the fields of production, distribution, marketing, sales, and delivery of goods or services via electronic means. Meanwhile, Fuady explained that e-commerce activities are carried out oriented towards online purchases (online transactions), digital communication (digital communication), service providers, business processes with systems and targets to increase automation, and a market of one that can adapt products. and services according to business needs.<sup>2</sup>

---

1 Munir Fuady, 2001, *Hukum Kontrak: Dari Sudut Pandang Hukum Bisnis*, Jakarta: Citra Aditya Bakti. Page 34

2 Heri Lilik Sudarmanto, 2020, *Pendekatan Hukum Dalam Mengatasi Masalah E-Commerce di Indonesia*, Jurnal Kencana Satu: Dinamika Masalah Hukum dan Keadilan, Volume 11 Nomor 1

The ITE Law Article 1 number 2 states that electronic transactions are legal acts carried out using computers, computer networks or other electronic media. In more detail, Makarim<sup>3</sup> explained that stakeholders in e-commerce have rights and obligations as regulated in the ITE Law, namely: first, business actors are sellers/merchant/entrepreneurs who offer a product via the internet. Second, the buyer/consumer is anyone who is not prohibited by law from conducting buying and selling transactions offered by business actors. Third, the bank is a party that distributes funds from buyers/consumers to business actors. The four providers are internet access service providers.

According to Traver and Laudon,<sup>4</sup> there are six types of online buying and selling, which are currently developing based on their activities in all countries:

1. Business-to-consumer e-commerce, namely online sales business from business units to individual consumers
2. Business-to-business e-commerce, namely online sales business from business units to other business units.
3. Social e-commerce, which allows social networks and social relationships online.
4. Consumer-to-consumer e-commerce, namely online sales business from consumers to other consumers.
5. Local e-commerce, which is focused on consumer bonds based on the geographic location of consumers.

With the various types of e-commerce offered, e-commerce is very relevant to face the new normal activities that are happening today. E-commerce is currently growing rapidly because this transaction offers convenience in the form of: first, business actors can offer their products to more consumers because the reach of the internet is able to penetrate various regions and even various countries. Both online buying and selling streamline consumer time because transactions can be done anywhere without having to go to product sales locations. Third, streamlining the operational costs of business actors because online buying and selling can be done anywhere, even though business actors do not have stores. Fourth, provide health security during the Covid-19 pandemic because business actors and consumers do not meet each other.

Although buying and selling online has many advantages compared to conventional transactions, in this case the risks that may occur in online buying and selling transactions must also be considered. The risk that often occurs is that business actors ignore the rights of consumers. Business actors easily send products that do not match the images offered, this causes consumer losses.

Article 3 of the ITE Law regulates that every use of information technology must be based on the principles of legal certainty, benefit, prudence, good faith and freedom to choose technology or be technology neutral.” Furthermore, regarding the importance of legal certainty, it is stated in Article 4 letter e of the ITE Law which stipulates that “electronic transactions are carried out with the aim of providing a sense of security, justice and legal certainty. This article emphasizes that business actors must comply with existing regulations when carrying out online buying and selling. So the legal umbrella that must be used by business actors and consumers who transact online is the ITE Law.

### **Legal Rules of Sale and Purchase Agreement**

An agreement is born when there is an agreement between the two parties. In terms of the validity of the agreement, it refers to Article 1320 of the KUHPdt, namely: the agreement of the parties, the abili-

---

3 E. Makarim, 2000, *Kopilasi Hukum Telematika*, Jakarta: PT. Gravindo Persada, page 35

4 K. C. Laudon & C. G. Traver, E-commerce 2014, *Business, Technology, Society, Tenth Edition*, 3rd penyunt., Prentice Hall, New Jersey, page 57

ty to make agreements, certain things or objects of goods or services agreements, and lawful causes.<sup>5</sup> The four terms of the agreement that become the benchmark for an agreement are declared as an agreement.

Every agreement made by the parties and declared valid as an agreement because of the fulfillment of the conditions mentioned above and also there are no elements that make it defective such as fraud, error and coercion. Then the consequences of each agreement will give birth to rights and obligations. The implementation of these rights and obligations is called achievement. Violations or errors in carrying out achievements are called defaults. The loss from default is the reason for one party to sue the other because he feels aggrieved as a result of not carrying out the achievement.

In everyday life, the agreements made every day are various, one of which is a sale and purchase agreement. The sale and purchase agreement based on Article 1457 of the Criminal Code states, “A sale and purchase is an agreement, whereby one party binds himself to deliver an object, and the other party pays the promised price.”

The definition of a sale and purchase agreement confirmed in the Criminal Code states that the sale and purchase agreement is bound by the object and the selling price. This definition when juxtaposed with the definition of Walter Woon,<sup>6</sup> a legal expert from Singapore, is not much different, namely, “A contract for the sale of goods is a contract by which the seller transfers or agrees to transfer the property (which in layman’s terms may be equal with ownership) in goods to the buyer for money consideration.” A similar definition is also expressed by Douglas J Whaley,<sup>7</sup> namely, “A ‘sale’ is a contract under which title to goods passes from a seller to a buyer for a consideration called a price. The three definitions from these three different countries are basically in tune, namely they both prioritize the essential elements of buying and selling, namely objects and prices.

The consequence of the sale and purchase agreement is that the seller delivers the goods and the buyer pays the price of the goods. The process of implementing the sale and purchase agreement begins with the agreement of the parties in advance, namely a meeting of the will of both parties. This is confirmed in Article 1458 of the Criminal Code, namely, “the sale and purchase is considered to have taken place between the two parties, immediately after these people reach an agreement on the object and the price, even though the object has not been handed over, nor has the price been paid.”

The determination of when the sale and purchase agreement is born will lead to the implementation of achievements. So it is very important to know. If we return to the legal basis, Article 1313 of the Criminal Code states that an agreement is an act of binding between the parties. Binding occurs if there is an agreement as stipulated in Article 1320 of the Criminal Code. However, the Criminal Code does not describe in detail what the agreement is. But legal experts still provide explanations about the agreement. Prof. Moch. Isnaeni<sup>8</sup> in the Book of Sale and Purchase Agreements that agreeing is nothing but the meeting of an offer with an acceptance.

The agreement in the sale and purchase agreement is reflected when the seller and buyer have mutually accepted the certainty of the goods and the amount of the price. The next legal consequence is the implementation of the rights and obligations of each party with the ultimate goal of transferring ownership rights to the object. This is why it is important for the parties to know the birth of a sale and purchase agreement.

---

5 Aulia Muthiah, 2016, *Aspek Hukum Dagang dan Pelaksanaannya di Indonesia*, Yogyakarta: Pustaka Baru Press, page 75

6 Walter Woon, 1995, *Basic Business Law In Singapore*, Singapore, Prentice Hall, page 70

7 Douglas J Whaley, 1992, *Sale & Lease Of Goods*, Chicago: Harcourt Brace Legal and Professional Publications inc, page 28

8 Prof Moch. Isnaeni, 2015, *Perjanjian Jual Beli*, Surabaya: Revka Petra Media, page 69

The figure of achievement in the sale and purchase agreement is an obligation that must be borne by the parties. Based on Article 1235 of the Criminal Code, that every achievement must be fulfilled. If the performance is not fulfilled perfectly, then one of the parties will bear the risk as stated in Article 1236 of the Criminal Code, that the provision of breaking a promise is a wrong act and the guilty party must be responsible for his mistake by paying compensation for costs, losses and interest. If he has brought himself in a state of being unable to give up his possessions.

The legal provisions of this sale and purchase agreement automatically also apply to online buying and selling transactions, even though the agreement is not carried out face to face, only by sending messages to each other. The messages sent can be used as evidence of a sign that there has been an offer of goods and prices.

Likewise, when one of the parties does not carry out its obligations, the provisions of default in 1236 of the Criminal Code must also be implemented. When the buyer does not make a payment, the seller also has the right to claim compensation or not to deliver the agreed upon goods. And vice versa if the goods that have been agreed are not in accordance with the expectations of the buyer, the seller is obliged to replace the goods in accordance with the agreement that has occurred.

### **Principles of Consumer Protection in Electronic Commerce Transactions**

Online buying and selling transactions provide many conveniences for consumers and also business actors, especially during the Covid-19 Pandemic. So that in the era of the Covid-19 Pandemic, online buying and selling is a solution to help the government suppress the growth rate of people infected with Covid-19. Consumers can shop at home without having to meet each other. This online transaction facility is very useful at this time. However, we must realize that even though online transaction offers are very useful, consumers must also be smart in carrying out these transactions. Because it is very easy for business actors to manipulate the products they sell, namely the images presented with the products sent do not match the quality of consumer expectations. So that in this case the rights of consumers remains a matter that must be prioritized to get protection.

Legal protection is protection for the fulfillment of the public interest. In the process of online buying and selling transactions involve business actors and consumers. Between business actors and consumers, each party has rights and obligations as regulated in Articles 6 and 7 of Law Number 8 of 1999 concerning Consumer Protection (UUPK).

This change in transaction model does not necessarily turn business actors away from the current regulations. Online buying and selling transactions or what is known as e-commerce is a transaction in trade carried out between sellers and buyers or with other parties in the same agreement relationship to send a number of goods, services, or transfer of rights. This transaction is contained in electronic media (digital media) which physically does not require a meeting of the transacting parties and the presence of this media in the public network.<sup>9</sup>

The ITE Law requires business actors to provide complete and correct information related to the products offered. This is regulated in the provisions of Article 9 which states that: “business actors offering products through the Electronic System must provide complete and correct information relating to contract terms, manufacturers, and products offered.” The provisions in this article must be a special concern for every business actor who sells their products online. This obligation is one of the objectives of legislators in terms of providing legal protection to the community.

---

9 Desak Ayu Lila Astuti dan A.A Ngurah Wirasila, *Perlindungan Hukum Terhadap Konsumen Pengguna Transaksi E-commerce Dalam Hal Terjadinya Kerugian*, Jurnal Hukum Bisnis, Fakultas Hukum Universitas Udayana.

Ongoing online transactions present several obligations of business actors in accordance with Article 7 of the UUPK, namely: a. have good intentions in carrying out their business activities; b. provide correct, clear and honest information regarding the condition and guarantee of goods and/or services as well as provide an explanation of the use, repair and maintenance; c. treat or serve consumers correctly and honestly and non-discriminatory; d. guarantee the quality of goods and/or services produced and/or traded based on the provisions of the applicable quality standards of goods and/or services; e. provide opportunities for consumers to test, and/or try certain goods and/or services as well as provide guarantees and/or guarantees for goods manufactured and/or traded; f. provide compensation, compensation and/or compensation for losses resulting from the use, use and utilization of traded goods and/or services; g. provide compensation, compensation and/or replacement if the goods and/or services received or utilized are not in accordance with the agreement.

Furthermore, consumers also have an obligation because the sale and purchase agreement is a reciprocal agreement. The obligations of consumers as regulated in article 5 are: a. read or follow information instructions and procedures for the use or utilization of goods and/or services, for security and safety; b. have good faith in making transactions for the purchase of goods and/or services; c. pay according to the agreed exchange rate; d. follow the legal efforts to settle consumer protection disputes properly.

In the event that one of the parties does not carry out the obligations stipulated in the UUPK, the payment of compensation is one of the solutions that can be used in resolving consumer disputes, both direct transactions and digital transactions. In terms of consumer dispute resolution, the principles of consumer protection must be observed. The purpose of this principle is to make it easier for those who must be responsible for the losses suffered by consumers.

In the case of e-commerce where consumers are harmed due to errors or negligence of business actors, the principle that can be used is the principle of responsibility based on the element of error/negligence (negligence). and also the principle of absolute responsibility (strict liability). These two principles state that consumers as weak parties find it difficult to claim their rights from business actors.

The principle of responsibility based on the element of error/negligence is a subjective principle of responsibility, namely a responsibility that is determined by the behavior of business actors.<sup>10</sup> Based on this theory, if the business actor either intentionally or negligently sends the wrong or damaged product, the responsibility is fully borne by the business actor.

Conditions for consumer claims related to Negligence are when the behavior of the business actor is not in accordance with the agreement made at the beginning of the sale and purchase transaction agreement. The conditions in detail as stated by Ahmadi Miru<sup>11</sup> are:

1. A behavior that causes harm, inconsistent with normal prudence.
2. It must be proven that the defendant was negligent in his duty of care to the plaintiff.
3. Such behavior is the real cause of the resulting loss.

The behavior of business actors that results in consumer losses is the reason for issuing sanctions. This provision is a guarantee of consumer protection based on the general theory in procedural law, namely the principle of *audi et alterm partem* or the principle of equal position between the two litigants.

The second principle of responsibility, namely strict liability, is a special form of tort (acts against the law). This principle requires business actors to be directly responsible for losses that arise due to mistakes in selling defective products. In its application, this principle is guided by the Criminal Code in

10 Inosentius Samsul, 2004, *Perlindungan Konsumen Kemungkinan Penerapan Tanggung Jawab Mutlak*, Jakarta: Universitas Indonesia, page 46

11 Ahmadi Miru, 2004, *Hukum Perlindungan Konsumen*, Jakarta: PT RajaGrafindo Persada, page 148

Articles 1365, 1366 and 1367.

In principle, these three articles require compensation for losses for consumers due to mistakes made by the business actor himself or people who are under the responsibility of the business actor when carrying out the buying and selling business, namely all employees within the scope of their work. In the concept of consumer protection, this principle requires an equal position between business actors and consumers.

The principle of strict liability is very relevant to be used to ensnare rogue business actors who deliberately sell defective products. In its application to truly provide protection to consumers, the principle of responsibility in the form of product liability is used. Based on this principle, business actors must be responsible for losses suffered by consumers. Product liability lawsuits can be made based on three things, namely:

1. Breach of warranty
2. There is an error / negligence (negligency)
3. Absolute liability (strict liability).<sup>12</sup>

The principle of strict liability responsibility aims to make it easier for consumers to claim their rights as consumers. This principle is basically applied for several reasons. First, consumers are not in a favorable position to prove fault in a complex production and distribution process. Second, business actors can anticipate early if an error occurs in producing a product by taking insurance or adding a cost component to the price of their product. Third, this principle will force business actors to always be careful in producing and distributing their products.

## Conclusion

The sale and purchase agreement is a reciprocal agreement that gives birth to rights and obligations for the parties, namely business actors and consumers. This sale and purchase agreement was born due to the meeting of the will of business actors and consumers, then they agreed on products and prices. The consequence of the sale and purchase agreement is the transfer of ownership of the goods and payment of the price of the goods.

The principle of consumer protection in online buying and selling transactions refers fully to the UUPK, so that in its application it can use the principle of responsibility based on the element of error/negligence. and also the principle of absolute responsibility (strict liability). In principle, these two methods aim to provide protection to consumers, especially in online transactions made with internet media.

## References

Astuti, Desak Ayu Lila dan A.A Ngurah Wirasila, *Perlindungan Hukum Terhadap Konsumen Pengguna Transaksi E-commerce Dalam Hal Terjadinya Kerugian*, Jurnal Hukum Bisnis, Fakultas Hukum Universitas Udayana.

E. Makarim, 2000, *Kopilasi Hukum Telematika*, Jakarta: PT. Gravindo Persada

Fuady, Munir 2001, *Hukum Kontrak: Dari Sudut Pandang Hukum Bisnis*, Jakarta: Citra Aditya Bakti

Isnaeni, Moch, 2015, *Perjanjian Jual Beli*, Surabaya: Revka Petra Media

---

<sup>12</sup> Aulia Muthiah, 2018, *Hukum Perlindungan Konsumen Dimensi Hukum Positif dan Ekonomi Syariah*, Yogyakarta: Pustaka Baru Press, page 125

- J Whaley, Douglas, 1992, *Sale & Lease Of Goods*, Chicago: Harcourt Brace Legal and Professional Publications inc
- K. C. Laudon & C. G. Traver, E-commerce 2014, *Business, Technology, Society, Tenth Edition*, 3rd penyunt., Prentice Hall, New Jersey
- Muthiah, Aulia, 2016, *Aspek Hukum Dagang dan Pelaksanaannya di Indonesia*, Yogyakarta: Pustaka Baru Press
- 2018, *Hukum Perlindungan Konsumen Dimensi Hukum Positif dan Ekonomi Syariah*, Yogyakarta: Pustaka Baru Press
- Miru, Ahmadi, 2004, *Hukum Perlindungan Konsumen*, Jakarta: PT RajaGrafindo Persada
- Sudarmanto Heri Lilik, 2020, *Pendekatan Hukum Dalam Mengatasi Masalah E-Commerce di Indonesia*, Jurnal Kencana Satu: Dinamika Masalah Hukum dan Keadilan, Volume 11 Nomor 1
- Samsul, Inosentius, 2004, *Perlindungan Konsumen Kemungkinan Penerapan Tanggung Jawab Mutlak*, Jakarta: Universitas Indonesia
- ,
- Woon, Walter, 1995, *Basic Business Law In Singapore*, Singapore, Prentice Hall