ANAYASA

(Journal of Legal Studies)

E-ISSN: 2987-9965

Vol.3, No. 1, Juli 2025

JURIDICAL REVIEW OF LEGAL PROBLEMS IN E-COMMERCE

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Abstract

Electronic commerce does provide many benefits, but it is also prone to violations of consumer rights. Law No. 19 of 2016 concerning ITE, Law No. 7 of 2014 concerning Trade and Law No. 8 of 1999 concerning Consumer Protection have indeed been prepared by the Government to deal with this matter in theory but not in practice where complications arise such as the viral case of ordering tiles worth 28.7 million consumers losing money and not getting their orders. The purpose of writing this law is to find out the position and responsibilities of the Dropshipper if there is a violation of Consumer Rights, and what regulations need to be applied by the Government to Dropshippers as ecommerce service providers in electronic trade transactions. The use of a normative perspective legislative approach aims to explain the legal position in online trade transactions. This study investigates legal principles, legal systematics, the degree of legal synchronization, and legal history. The data used are from secondary, primary, and tertiary legal sources. The result of this writing research is that legal certainty can be answered with preventive steps, namely recording the identity of e-commerce platform actors who are required to have a business license based on Article 15 of PP PMSE. As well as the need for the role of the Ministry of Communication and Information to strive to supervise business actors in e-commerce.

Keywords: Transactions, consumer rights, infringements, consumer protection

Abstrak

Perdagangan elektronik memang memberikan banyak keuntungan tapi juga rawan terjadinya pelanggaran akan hak-hak konsumen. UU No 19 tahun 2016 tentang ITE, UU No 7 tahun 2014 tentang Perdagangan dan UU No 8 tahun 1999 tentang Perlindungan Konsumen memang telah disiapkan oleh Pemerintah untuk menangani hal ini secara teori tapi tidak dalam praktek yang terjadi timbul kerumitan seperti kasus viral pemesanan genteng senilai 28,7 juta konsumen kehilangan uang dan tidak mendapatkan pesanannya. Tujuan dalam penulisan hukum ini untuk mengetahui kedudukan dan tanggung jawab Dropshipper apabila terdapat pelanggaran Hak Konsumen serta regulasi apakah yang perlu diterapkan oleh Pemerintah kepada Dropshipper selaku penyedia layanan penyedia e-commerce dalam bertransaksi dagang secara electronic. Digunakannya pendekatan perundang-undangan yang bersifat perspektif secara normatif bertujuan untuk menjelaskan posisi hukum dalam bertransaksi dagang secara online. Studi ini menyelidiki asas-asas hukum, sistematika hukum, taraf sinkronisasi hukum, dan sejarah hukum. Data yang digunakan dari sumber hukum sekunder, primer

dan juga tersier. Hasil penelitian penulisan ini adalah bahwasanya Kepastian hukum dapat dijawab dengan langkah preventif yaitu mencatatkan identitas pelaku platform ecommerce yang diharuskan mempunyai ijin usahanya berlandaskan Pasal 15 PP PMSE. Serta perlunya peran Kemkominfo untuk berupaya dalam pengawasan para pelaku usaha di e-commerce.

Kata kunci: Bertransaksi, hak konsumen, pelanggaran, perlindungan konsumen

INTRODUCTION

E-commerce has meaning "electronic commerce", is a widespread distribution of trade with electronic media. E-commerce includes sales, distribution, purchase, promotion, and services offered by products that are carried out through an electronic mechanism such as the Internet or other types of computer networks. The Internet is one of the advancements in information and communication technology that has been widely used for various purposes, such as searching for information and news, browsing, and trading. Online trading allows one to transact trades through an electronic system with anyone, anytime, and anywhere. The parties conduct trade transactions through the internet based on mutual trust between the first party and the other party, so that the purchase and sale agreement is carried out electronically without face-to-face contact. With e-commerce, consumers and manufacturers can collect and assess information about goods and services more easily without limitation by territorial boundaries. E-commerce allows anyone, including MSMEs, to sell products to a wider market without geographical barriers or high costs (Retnowati et al., 2022).

E-commerce not only does it makes it easier for buyers, but it also makes it easier for manufacturers to market their goods, which reduces costs and time. Various aspects of human life have undergone major changes during the digital era, including trade using electronic policies. E-commerce has changed the business world significantly as it allows customers to shop online without being tied down by geographic location. Businesses can now reach customers around the world with ease, expanding market reach and growth opportunities without physical limitations. (Made et al., 2024). The convenience of ecommerce will certainly present some legal complexities because there are several things that we usually do in conventional transactions that have changed. Product marketing in the digital world requires the role of a trade intermediary to disseminate product information and specifications widely from various sources, systems. Digital intermediaries facilitate the widespread dissemination of product information, prices, and specifications, so that consumers can compare and choose products more easily (Chen et al., 2020). In this system, two parties are involved in a legal relationship: the drop shipper with the seller and the drop shipper with the buyer. If they manage to get a buyer, the dropshipper orders the buyer's order to the supplier, which then sends the product to the buyer on behalf of the dropshipper. Thus, dropshippers have legal standing and liability during the online buying and selling process. Dropshippers establish a legal relationship with two parties: the supplier (seller of goods) and the buyer (consumer) (Astutik et al., 2023).

An example of a case that occurred on Tokopedia where a buyer ordered tiles worth Rp 28.7 million, but the tiles were not accepted by the buyer, and it turned out that the seller was fictitious. In the delivery of goods, buyers take the same-day delivery with services that are already available on Tokopedia. Even though the goods have not yet been received by the buyer, the transaction that occurs is completed automatically, if within 2 x 24 hours the buyer does not confirm the receipt of the goods or does not file a complaint about the receipt of the goods, and the buyer of this tile case does not file a complaint when the goods have been sent by the relevant courier. Tokopedia also coordinated with the relevant team and found no system error, but human error. This is one of the excuses from Tokopedia to twist and avoid its responsibility.

Results: Investigations show that sellers are using couriers who are not supposed to make deliveries. And if the seller uses courier, it should not be used for the delivery in Tokopedia, then why can the delivery be approved? Now, Tokopedia has stopped the operation of the online store and will no longer be able to operate on Tokopedia because it has violated the terms and conditions, such as installing delivery of goods outside the system of Tokopedia system. Observing this incident, the Chairman of the Indonesian E-Commerce Association (IDEA) said that it is necessary to take legal channels so that there is clarity about the problems that have occurred. If there is indeed nothing wrong with the system, then this action will restore the name of Tokopedia. On the other hand, if there has been a system error in the incident, it will be a repair note for Tokopedia. "Maybe the seller is cheating or appears to be making a special transaction under the table with an expedition person. Transactions are sent on the same day (same day)," in his explanation.

The problems in this area invite profound questions about whether regulations should be changed or made better to deal with the legal issues that arise as technology evolves. Through an in-depth analysis of legal issues related to e-commerce, the hope of the research that has been conducted is to provide a more comprehensive understanding of the legal issues faced in the scope of electronic business transactions. Therefore, it is hoped that there will be solutions or recommendations that help develop e-commerce regulatory policies that have a positive impact in the future.

METHOD

The author examines the literature, especially secondary data, which consists of primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and regulations, such as laws, government regulations, and other implementing regulations. Meanwhile, secondary legal materials include research results, scientific journals, legal textbooks, and opinions of legal experts related to the problems being studied. The tertiary legal materials are used as additional support in the form of legal encyclopedias, legal dictionaries, and legislative indexes. This research uses a normative legal approach, which is legal research based on norms contained in laws and regulations and applicable legal literature. This approach is intended to examine in depth the positive legal provisions that govern the issues that are the focus of the study, as well as the legal

principles and principles that underlie them. The subject of this research is the systematics of laws and regulations that are relevant to the legal issues being studied, including the comparison of norms in several regulations that are related to each other. This study did not involve respondents or participants directly, because all data were sourced from written documents. The data analysis technique used is qualitative analysis with an emphasis on legal interpretation, legal coherence, and legal reasoning. In the process of analysis, the author identifies, classifies, and studies the substance of the law systematically to understand how these rules apply and are implemented, as well as to examine the harmony between existing norms. With this method, the author seeks to draw a valid and relevant juridical conclusion on the subject matter studied in Indonesia's positive legal framework.

RESULTS AND DISCUSSION

Law Enforcement and Fraud Crime Prevention in the development of e-commerce

Digital Developments in Transactions in e-Commerce Services in the Digital Age (APJII) The Indonesian Internet Service Providers Association announced that the number of Indonesian internet users in 2024 will reach 221,563,479 people out of a total population of 278,696,200 people in Indonesia in 2023. From the results of the 2024 Indonesian internet penetration survey released by APJII, Indonesia's internet penetration rate touched 79.5%. Compared to the previous period, there was an increase of 1.4%.

It is very important that problems and legal issues in e-commerce need to be examined and scrutinized one by one because, with the development of technology, crimes in e-commerce will also develop. Problems in e-commerce include:

- 1. Privacy security
- 2. Copyright or IP
- 3. Freedom of expression
- 4. Trade Transactions
- 5. Consumer Protection

In this thesis, the author focuses more on trading transactions or buying and selling carried out electronically. The problem of digital transformation on the main ecommerce platform is centered on three problems, namely trust, privacy, and personal data. In the Unitary State of the Republic of Indonesia, the steps to provide legal security to ecommerce consumers have been quite comprehensive that has been regulated by the state, especially in the PK Law No. 8 of 1999, Law Per Number 7 of 2014, ITE Law Number 19 of 2016, and PP PMSE Number 80 of 2019 Business actors have prohibited actions when acting as sellers to protect consumers. This provision can be seen in Article 8 of the Consumer Protection Law, which has required traders to sell products that should be following the product description attached to the sale, do not market damaged or expired goods and the condition of the product must be explained in detail equal to the reality of the goods to consumers who will buy them. Business actors are obliged to provide product information honestly and in detail, and are responsible for consumer losses due to non-

compliant products (Devi & Simarsoit, 2020). The information is in Article 1491 Paragraph (2) of the Criminal Code, which contains the regulation of the seller's obligation to provide a guarantee that "there are no hidden defects in the products he sells, or other similar defects until a reason arises for the cancellation of the transaction. The trader has responsibility if there is a small damage that is not visible, if there is indeed (Verborgen gebreken) in the product being traded, has a defect that results in the inability to be used or in meeting the intended needs, so that the buyer will not buy the item if the defect is known.

If a loss arises in buying and selling, in Article 19 Paragraph (1) of the PK Law emphasizes that the trader has the responsibility to compensate the buyer by returning the buyer's money, if the buyer does not want to with the goods he bought and exchanges similar goods or has the same value or provides compensation of equal value. Buyers can file a lawsuit through an intermediary, namely the Consumer Dispute Resolution Agency (BPSK). However, in practice, it is still found that traders do not fully understand or implement this principle of responsibility, especially in traditional markets. Some merchants do compensate if the goods are defective, but others do not, on the grounds of minimizing their losses (Mareta Elesia Putri et al., 2023). If the business actor remains with his stance and tries not to compensate for the losses that exist due to the faulty goods he trades, criminal violations and additional penalties can also be given, which have been regulated in Article 62 and Article 63 of the PK Law. Regarding the settlement of disputes, Article 45 Paragraph (2) of the PK Law has provided a voluntary choice to those who have a dispute, whether it will be carried out in litigation or non-litigation, with a note in Article 45 Paragraph (3), their criminal liability will not be eliminated by permanent non-litigation efforts. Criminal violations are also contained in Article 28, Juncto Article 45 Paragraph (2) of the ITE Law which states that the act of lying or misleading information to consumers is classified as a prohibited act, and the perpetrators of violations can be sentenced to a maximum of six years in prison and even a maximum fine of IDR 1 billion. Violations can occur either through outright lies or by misleading means without explicitly stating the lie (García-Carpintero, 2023).

When consumers transact on e-commerce platforms, irresponsible business actors are often not responsible for the losses that occur. To prevent this from happening in the future, we can establish the identity of business actors on the e-commerce platform through a business license, so that they can be identified as merchants through an electronic system. The business license referred to according to Article 15 Paragraph (3) of PP PMSE can be submitted through an integrated electronic business license In connection with the protection business, the buyer or buyer has the right to submit it to the Minister of Trade, namely to the Directorate of Consumer Protection and Commercial Order After the client completes the company's report, the authority will be responded. After the submission and reporting are completed, the authority will respond to the relevant agencies according to their fields (Made et al., 2024). After registration, business actors will obtain a Business Identification Number (NIB) as identity and proof of

business legality (Ekawati & Sarikun, 2023). The report will be included in the record of the supervisory priority list, which is publicly accessible. This will make it easier for buyers to assess the quality of merchants in e-commerce services, so that consumer protection is not only repressive but also pre-purchase, and makes legal protection better and more reliable. Publicly accessible records allow consumers to assess the quality and reliability of sellers before making a purchase, reducing information asymmetry and helping buyers avoid fraudulent or low-quality merchants (Sugeng & Fitria, 2021). The usefulness of ecommerce services as a product of the internet is indeed unlimited, and there is no single official jurisdiction that recognizes the whole. With that, it was also conveyed, PP PMSE also provides a guarantee in terms of protecting buyers legally if there are goods purchased from foreign or imported traders. Disputes that are believed to arise in this transaction must be resolved through the consumer dispute handling institution or the general court as stipulated in the PK Law. Proceedings in the general court tend to take longer and cost more than BPSK (Kusnadi & Marpaung, 2022).

Regulatory and Legal Efforts for ECommerce Services in the Era of Digital Transformation

Considering the existing legal handling for e-commerce transactions, it proves the government's readiness in anticipating the development of science and technology advances in the digital era. It also confirms the presence of humans in the modern and digital business revolution. However, the regulations described above do not cover the legal protection of consumers and their liability in their transactions with temporary sellers or sellers who transact through electronic systems that occur occasionally. In Article 1, point 9 of the PP. PMSE, the term "personal" is used to describe sellers who are only doing it temporarily. A person who sells goods or services without the purpose of commercialization is referred to as "private". Therefore, to optimize consumer protection without compromising the rights of business actors, the previously mentioned prevention must be combined with alternative and solution measures. Consumer protection is regulated in various laws, such as Law No. 8 of 1999 concerning Consumer Protection, which affirms the rights of consumers and the obligations of business actors (Widiarty et al., 2024).

The ITE Law regulates all electronic transactions, both in the market and on e-commerce platforms. The legal action is defined as a human action that is deliberately carried out that resulting in rights and obligations with a statement of will, which means that the actions of a person who transacts electronically can result in legal action. The ITE Law regulates electronic transactions, including buying and selling, services, and information exchange through the internet. Any action in electronic transactions, even if it occurs in cyberspace, is still considered a real legal action that can give rise to legal consequences such as rights and obligations (Melani et al., 2020). Every party that conducts PMSE must have a business license. This is clearly shown in Article 4 of the PP PMSE that both individuals who have a business and temporal, and also "parties" of the PP PMSE. Chapter 1 of the ITE Law has also recognized any transacting activity in the use of ITE

as a legal action that should be guaranteed legal certainty, and it is further emphasized in Article 3 of the ITE Law. In order for legal action in electronic commerce on ecommerce platforms to work properly, this loophole must be closed. If the licensing mechanism of an individual or person selling does not have rules, this can result in the seller deceiving customers when they transact on the e-commerce platform. This is done to ensure that consumers will be protected from the definite laws listed in Chapter 1 of the Criminal Justice Law.

To avoid repression against individuals or temporary sellers, business licenses to the Ministry of Trade must be regulated immediately. As an implementing regulation, PP PMSE must ensure that it is following the laws and regulations above. According to the ITE Law, Trade, and the PK Law, trade transactions in this case are directed by electronic means using any media. The provision is based on the legal principles that a higher legal provision can override a lower legal provision (lex superior derogat legi inferiori). Practical needs that arise during e-commerce transactions can include arranging for the granting of business licenses to individuals or temporary sellers. Business licenses are needed to support supervision, consumer protection, and create an orderly and healthy business ecosystem (Riani, 2024).

The implementation of PPMSE so that it can be optimized in accommodating e-commerce transactions, especially in e-commerce services, can be pursued in a solution, namely the issuance of a ministerial circular (SE). The circular can be issued by the Ministry of Trade as "beleidsregels" (policy rules) or its policy regulations as a reflection of the "doelmatigheid" that applies to "freisermessen", that is, the government has a free principle to take action to achieve the goals of constant government per the law. This can also be explained when there are laws and/or regulations that have not accommodated the essentials so that a need can be fulfilled practically, for example, in electronic commerce on e-commerce platforms. The content of the Circular Letter of the Minister of Trade is also equal to business licensing in Article 15 of PP PMSE, which indicates the fulfillment of trust. This can guarantee consumer trust and consumer confidence so that they can transact on e-commerce platforms. Then, according to McKnight, to achieve both, it is necessary to build trust to believe by sellers to fulfill the trust of the SE Minister of Trade according to this method:

a. Benevolence

Temporal sellers who have benevolence will show attention and concern for the interests of consumers, even though the relationship established is short-term. This action is not solely for personal gain, but rather reflects integrity and social responsibility in the buying and selling process. By showing good faith, sellers can create a sense of security and comfort for consumers. Consumer trust will grow more easily if they feel that the seller will not harm or take advantage of their ignorance in the transaction. In the end, benevolence is not only beneficial for consumers but also provides added value for the sellers themselves. A good reputation and trust built will open up opportunities for long-term interaction and transactions, even if the relationship is initially temporary.

Integrity

Integrity is an important trait that must be possessed by individuals or temporary sellers. Integrity is shown through honest and consistent behavior in actions and speech. This honesty is the main foundation in building a healthy relationship between seller and consumer, even if the interaction is temporary. By maintaining integrity, sellers can ensure that agreements made with consumers can be fulfilled properly. Consumers will also feel more confident and confident that transactions are carried out fairly and transparently. This attitude not only supports smooth transactions but also builds a positive reputation for sellers. Integrity also reflects the commitment of sellers to ethical values in doing business. In practice, sellers with integrity will not manipulate information, mislead consumers, or seek profits in a way that harms other parties. This attitude shows that the seller values the consumer as an equal partner in the transaction. Furthermore, well-maintained integrity can create consumer loyalty, even if the relationship is temporary. Consumers tend to return to or recommend sellers they consider trustworthy. Therefore, maintaining integrity is not only a moral obligation but also a long-term strategy that benefits both parties.

c. Competence

Competence is the ability that must be possessed by individuals or temporary sellers in providing the best service to consumers. Sellers are required to understand consumer needs and be able to meet them appropriately and efficiently during the transaction process. By demonstrating good competence, consumers will judge that the seller has reliable expertise and knowledge. This will foster consumer confidence in the ability of sellers to carry out transactions professionally and satisfactorily. Competencies include not only knowledge of the product or service offered, but also communication skills, speed in responding, as well as the ability to solve problems that may arise during the buying and selling process. A competent salesperson will be able to provide relevant solutions and help consumers make the right decisions. In addition, competence also reflects the seriousness of the seller in establishing a professional relationship with consumers. When consumers feel served by someone competent, they tend to have higher satisfaction, and the likelihood of returning to transactions in the future will increase. Competence, therefore, becomes one of the main foundations in creating long-term trust, even in relationships that are temporal.

To protect consumers from the crime of electronic transactions, it can be seen from the following related policies, such as:

- a. Chapter III articles 4 to 7 of the PK Law relate to Obligations and also rights for sellers and consumers.
- b. Chapter IV articles 8 to 17 of the PK Law regarding the identification of what things are done that are prohibited for business actors.
- c. Article 1338 jo Article 1320 of the Civil Code regarding freedom contracts and the legal conditions of an agreement.

- d. Article 65 and Article 66 of the Trade Law regarding electronic trade operations;
- e. Chapter V, articles 17 to 22 of the ITE Law regarding electronic transactions.
- f. Chapter VI, articles 27 to 37 of the ITE Law regarding any prohibited acts.

Regarding a transaction in trade, the presence of a dispute between the relationship between business actors and consumers can be resolved by means of litigation or non-litigation. Includes arbitration, mediation, conciliation, negotiation, and settlement through the Consumer Dispute Resolution Agency (BPSK) (Itra Saleh et al., 2023). Generally, electronic media can resolve an electronic trade dispute, but it is not much different from the conventional way of resolving trade disputes. Judging from the state of consumer disputes that have a small nominal value, but need to be resolved quickly and financing is relatively not too large, online arbitration can be said to be the right choice to choose. Regarding the resolution of the dispute utilizing litigation, several things need to be applied, including punishment as a form of protection for consumers when a dispute occurs. The application of punishment can be divided into 3 types, including:

a. Criminal Punishment

Criminal penalties are applied in electronic commerce on e-commerce platforms following the criminal provisions of Article 62 paragraph (1) of the PK Law, which is in the form of a maximum prison sentence of 5 years or a maximum fine of IDR 2 billion for business actors who violate the Consumer Protection Law. As a continuation, it has also been regulated in Article 63 of the Criminal Court Law that it is also possible to provide additional criminal penalties in the form of confiscation of goods, giving a verdict by a judge, compensation for losses, cessation of certain activities, until business licenses are revoked. There is also the application of criminal penalties for a consumer fraud case regulated in the ITE Law Article 45 Paragraph (2), which can result in a prison sentence of 6 years and also a fine of Rp1 billion.

b. Civil Penalties

From a civil point of view regarding losses experienced by consumers, it can be reviewed from the provisions of Article 45 paragraphs (1) and (2) of the Criminal Court Law regarding the rights of consumers to be able to file a lawsuit. Meanwhile, regarding business actors 'responsibility, it can be seen from Article 19 of the PK Law in the form of making compensation.

c. Administrative Penalties

From an administrative point of view, when the seller does not make his compensation civilly to the consumers, he harms them. The application of administrative punishment can be seen from Article 60 of the Criminal Court Law concerning institutions that have authority in terms of imposing administrative penalties, as well as the determination of compensation in the amount of a maximum of Rp200 million. Consumers are given protection is an important thing that must be given special attention that must be given by the government. Although the progress of science and technology is increasing and electronic commerce is accelerating, it can be said that the culture of Indonesian society

is still not entirely confident in understanding the mechanism of electronic commerce. E-commerce is still eroded due to the rise of cybercrime and electronic system disruptions. The government's efforts through regulations such as the Information and Electronic Transaction Law are still not fully effective in ensuring transaction security (Farida et al., 2024). The principle of legal certainty must continue to be enforced by the government. In the implementation of electronic trade, policies do not have to focus on orientation in terms of security and consumer convenience in transactions, but must be able to remove various obstacles in trade and organize electronic trade as much as possible (Pariadi, 2016).

CONCLUSION

After discussion as well as descriptions of the results of the research that has been carried out, from this we can conclude that: Protection by law for society is a protection of dignity and dignity as well as recognition of human rights that should be owned by legal subjects based on legal provisions from an arbitrary or a collection of rules or rules and norms that can be protected from one thing to another. About consumers who are also citizens, the Government should regulate regulations or laws in order to provide full protection for consumer rights, so that they can get legal certainty. The impact of legal certainty given to the community will result in public trust in the government increasing, and will have a positive impact on the principles of good governance. In the case of the viral Tile in the end, consumers get complicated in the process to getting their money back to time. It is the party from Tokopedia that must be responsible for the incident.

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