

LEGAL PROTECTION FOR CONSUMERS OF ELECTRONIC TRANSACTIONS (E-COMMERCE) BY PRE-ORDER SYSTEM(Case Study District Court Decree No: 629/Pdt.G/2020/PN.JKT.SEL)

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ABSTRACT : This research reviewed the validity of the electronic transaction conducted by a business actor with customer by the pre-order system via online sites or sale and purchase platforms. The problems formulation were how the validity of electronically sale and purchase based on the pre-order system and how the legal protection for the customer of lousy faith from business actor related to the pre-order purchasing system? The method of this research was normative and literature study based on law material, secondary material (scientific work, journal, books, documents, and other literature), and tertiary law (law dictionary). The result was that electronic trading by the pre-order system was presumed valid by positive law, based on Civil Code article 1332 regarding the future objects as objects in the contract allowed. The customer suffered a loss due to the pre-order system before the transaction happened. It is an understanding of the law related to e-commerce or after the transaction in the form of a request to the Consumer Dispute Settlement Agency (BPSK), which is forwarded to litigation or non-litigation.

KEYWORDS : *Legal protection for consumers, Electronic transactions, The validity of the contract, Pre-order system*

I. INTRODUCTION

Law is a set of norms that makes society obey something and keep their behaviors related to others (Satjipto, 1991:27). According to Civil Code Article 1313, a law relation emerges: "An agreement is an act according to which one or more individuals commit themselves to one another." If the contract is a deal between seller or buyer, then the sale and purchase occur. The government constructs regulation as a base for trading stipulated in Act No. 8 of 1999 concerning Consumer Protection (furthermore called UUPK). According to article 1 paragraph 2 UUPK, the buyer term is; "Consumer is each user goods and/or services available in society, for the benefit of themselves, family members, other people, and other living creatures and which are not for trading." While the seller term, according to article 1 paragraph 3 UUPK; "An entrepreneur is a person or a company, in the form of a legal or non-legal entity established and domiciled or engaged in activities within the legal territory of the Republic of Indonesia, conducting various kinds of business activities in the economic sector through contracts, both individually and collectively."

Today, sale and purchase activities are influenced by era development forward to cyber space-based internet. Technology advances bring the economy penetrates a new world called the digital economy. The economy-based internet as communication media brings a selling system with new electronic commerce (e-commerce) method (Richardus, 2001:33). E-commerce has a significant role in changing commerce's face in previously conventional (sale and purchase between business actor and customer face to face, switch to electronic that indirectly or without face to face. Due to the traditional trade assumed old, e-commerce provides conveniences for customers to keep their needs without going out; just access via gadget connecting to the internet and then choose a platform or website.

In Indonesia, e-commerce was known in 1996 and was marked by the site <http://www.sanur.com> as the first online bookstore in Sumatera Utara University (Ika, 2018:2). The e-commerce system knows an electronically signing process designed when purchasing, checking and delivering (Abdul, 2005:vii). This innovation provides many advantages for many parties, yet it has negative effect. For a business actor, the positive impact of e-commerce is a facility for product marketing that can be known by more people. Yet, if it is seen with a negative impact, it can cause loss for both parties, the business actor and customer, then need to implement the careful principle.

The Government gave a particular concern for electronic transactions through Act No. 11 of 2008 concerning Information and Electronic transactions, hereinafter referred to as Act No. 19 of 2016 concerning Act No. 11 of 2008 Amendment (hereinafter referred to UU ITE). The definition of electronic transactions in article 1 paragraph 2 UU ITE states: "Legal action conducted by computer, network computer and/or other electronic media." Electronic transactions have the meaning of a form of legal action between business actors and customers that emerge to rights and obligations as legal consequences of an agreement based on electronic media (Enni, 2014:287). The agreement, such as customer approval on goods and/or services offered, is displayed on the website, then the business actor's obligations arise to fulfill his promises on the agreement.

There are various offering methods, the world gets familiar with the Pre-Order (PO) term, which is a system of good purchasing by ordering and paying first before there is an estimate or prediction about the arrival time of the goods. Shortly, the customer makes payment firstly even though the goods doesn't ready yet for shipping. Usually, the pre-order goods are imported, custom, or should be produced first, then need waiting time a little longer. There is a possibility that one of the parties is negligent party and doesn't do their obligations, such as when the customers do purchase order by the pre-order system, yet when the order is ready, they cancel the purchasing order unilaterally and don't make repayment as it should be stated at the beginning of the contract, then the business actor suffers loss (M. Miftah, 2022:85). But what if the business actor commits the default? Indeed, the customer suffers loss and wants their right to be fulfilled.

According to the above explanations, the author wants to review in-depth the problem in this research that has the title "Legal Protection for Customer of Electronic transactions (E-Commerce) by Pre-Order System (Case Study District Court Decree No: 629/Pdt.G/2020/Pn.Jkt.Sel)". The problem formulations are: 1) How is the validity of electronically sale and purchase-based pre-order system, and 2) How is the legal protection for the customer of lousy faith from business actors related to the pre-order purchasing system?

II. RESEARCH METHOD

The research used a normative method and literature study, which was to review the object in this research based on relevant law material sources, both primary as related regulation, then secondary as literature and other resources, law dictionary as well. Then all the resources are inventoried and observed through positive law in Indonesia (Bambang, 1991:14). The research is based on a statute approach and descriptive qualitative. The qualitative approach creates the descriptive data as written or oral from the informants, and their behaviors were observed and did not contain variable or hypothesis form (Lexy, 2000:2).

III. DISCUSSION

1. The Validity Of The Electronically Sale And Purchase Agreement Based Pre-Order System

Civil Code article 1475; "A sale and purchase is an agreement by which one party is bound to deliver a certain matter, for which the other party shall pay a stipulated price." A sale and purchase agreement is an agreement where the seller transfers the possession of goods to the buyer as reward money, called a price (Abdulkadir, 2010:243). Electronic Commerce is the sale and purchase process or exchange of products, services, and information via a computer network; it also needs a database, e-mail, and other forms of technology such as goods delivery system and payment method. Usually, e-commerce has some kinds and types in its execution (Sanusi:53).

- a. Chat or video conference; interactive dialogue model through chat by written while video conference conducted by electronic media which is people seeing and hearing another party who do offerings.
- b. E-mail; the consumer writes the product specifications, delivery address, and payment method. Then, receive a confirmation from the entrepreneur about the orders. (Haris:29)

E-commerce appears due to the electronic sale and purchase contract between entrepreneur and consumer. The electronic contract in article 47 paragraph 3 of Government Regulation No. 71 the year 2019 concerning System Execution and Electronic Transaction (hereinafter referred to PP PSTE) should be contained: the identity of the party, object and specifications; condition of electronic transactions; price and charge; cancellation procedures in case; a term that gives the rights to the party suffering loss for goods replacement in case there is a hidden defect of the product; and legal choice for electronic transaction settlement".

UU ITE doesn't rule the excellent condition of electronic contract yet, so it is still referred to as Indonesia Civil Code article 1320 in general: an agreement, ability, a specific matter, and halal cause. According to Subekti, a sale and purchase agreement arises due to goods and price dealing (Subekti, 1995:2). The deal is essential to point contained in consensual principle when it is related to e-commerce then can be seen in UU ITE article 20 paragraph 1; "Except it determined by the parties, the electronic transaction occurs when the receiver has received transaction offerings from the sender." It has a meaning, the consumer requests an offering and adds the order to the shopping cart, already dealing indirectly. The entrepreneur should send the order or do what already has to be his obligation.

The entrepreneur uploads a list and product catalog with detailed descriptions to minimize misunderstanding on the sites or platforms where he sells. The consumer can choose and add the product to the shopping cart, then fill in identity and address clearly in the order form after that, make payment with various methods, such as bank transfer or e-wallet, Cash on Delivery (COD), or pay later (payment during several time). Shortly, the steps of e-commerce are to find it, explore it, select it, buy it and ship it. According to MunirFuady, e-commerce is distinguished to be some kinds; (Munir: 408)

- a. Business to Business (B2B): consumers and entrepreneurs are a company, not an individual. Usually, this transaction is carried out to make a relationship between the companies.
- b. Business to Consumer (B2C): the transaction between company and consumer. Generally using the website.
- c. Consumer to Consumer (C2C): the transaction between individual and individual selling goods to each other.
- d. Consumer to Business (C2B): the transaction that allows the individual selling goods to the company.
- e. Non-Business Electronic Commerce
- f. Intrabusiness (Organizational) Electronic Commerce

An ability, as seen from several articles, is; article 330 of the Indonesia Civil Code; Minors are those who have not reached the full age of twenty-one years and who have not previously entered into matrimony they shall not regain the status of a minor. Article 1330. The following individuals shall be incompetent to conclude agreements: minors; individuals under guardianship; married women, in the events stipulated by law. The limit of full age today varies, determined by special law, such as the limit of full age to participate in politics and having an Identity Card is seventeen years old. So it can be known that the consumer who has ability doesn't include in article 1330 of the Indonesian Civil Code and already has an identity card as adult evidence.

A specific matter is traded object that can be determined by the total and types. Civil Code article 1332; "Only matters that can be traded can be the subject of agreements." The traded object, such as tangible or intangible goods, movable or immovable, exists or will be lived in the future. When it is related to the pre-order system in which the goods will be ready at a specific time by the entrepreneur, then the excellent condition of the agreement has been fulfilled. Next, the halal cause, traded object, doesn't break the Indonesian Civil Code article 1337; "A cause is not permissible if it is prohibited by law, or if it violates good conduct or public order." Generally the e-commerce object, such as fashion, automotive, house wires, and others, in case it is legal and not prohibited, and the transaction is valid.

2. Legal Protection For Consumers From Entrepreneur's Bad Faith Regarding Pre-Order Sale System

E-commerce offers various payment methods, which is expected to give legal protection to the consumer to the more safe transaction, then it needs an effective, quick, and reliable payment system. Bank services are required as fund distributors of the payment by transferring from consumer account to entrepreneur account, or it is called account to account (Edmon, 2008:78). Those transactions are transfer processes of rights possession of goods/services from goods provider or benefits provider to consumer (Nasution, 1995:37). The entrepreneur should deliver the product paid for by the consumer as a form of obligation contained in the e-commerce contract. Yet, there is an understanding that the consumer should be ready for the consequences of his choice regarding the product/services offered (Inosenus, 2004:4).

The era of development is unstoppable. Ministry of Trade has tightened the space for trade in cyberspace by providing various binding requirements, one of which is regarding licensing. The rise of data breaches is a severe concern to ensure cyberspace security systems by researchers and information technology practitioners. Raw data from a computer that is sent to another computer is very vulnerable to third-party "intervention", therefore a particular strategy is needed regarding at least two things; 1) The data sent is not physically taken by another party who is not entitled, 2) The data sent can be physically retrieved, but the person concerned cannot read it. Information security is the most critical part of e-commerce in the era of technology. Moreover, almost all needs can be received quickly, easily, and safely. Thus, the role of information security technology is very much needed (Onno, 2001:17). Here are four basic types of goals related to information security: (Onno, 2001:18-19).

- a. Confidentiality: guarantee that the information sent cannot be opened or known to unauthorized persons. Critical data requires a very high level of confidentiality, which can only be accessed by certain parties (the right people).
- b. Integrity: ensure the consistency and integrity of the data according to the original to avoid the actions of irresponsible parties who duplicate and destroy data.
- c. Integrity: ensure the consistency and integrity of the data according to the original to avoid the actions of irresponsible parties who duplicate and destroy data.
- d. Availability: guarantees authorized users have access to their information. The goal is to ensure that the party is not denied access to information to which they are entitled.
- e. Legitimate use: guaranteeing certainty that the source is not used (information is not accessed) by other parties who are not responsible.

The rapid development of the sales system has made business actors not only sell ready-to-ship goods but also trade goods that will be available in the future, this kind of thing is known as the Pre-Order (PO) system. Thus, the position of consumers needs to be given more attention as stated in Article 1 paragraph (1) UUPK; "Consumers' protection is all means which guarantee the legal security to protect the consumers." Article 2 of the UUPK mentions five principles that form the basis of consumer protection principles of benefit, justice, balance, consumer safety and security, and legal certainty. Consumer legal protection can be done before the transaction (no conflict/prepurchase) and/or after the transaction (conflict/post-purchase) (Johanes, 1999:3).

- a. Legislation; legal protection of consumers before the transactions through the formation of legislation, it is expected that the limits and provisions governing transactions between consumers and business actors can guarantee their implementation correctly.
- b. Voluntary Self Regulation; consumer legal protection carried out before the transaction; namely, business actors make regulations to be more careful in running their business.

Furthermore, consumer legal protection after the transaction (conflict/post-purchase) can be carried out through litigation (court) or non-litigation by the Consumer Dispute Settlement Agency (BPSK), which is adjusted to the agreement of the disputing parties. Article 54, paragraph (3) of the UUPK explains that the decision of the BPSK assembly is final and binding. However, business actors can file an objection to the District Court through the Registrar's Office within a period of 14 days from the time they receive the notification of the BPSK decision.

The rights owned by consumers are contained in Article 4 of the UUPK, including; the right to comfort, security, and safety in consuming goods and/or services; the right to choose goods and/or services, and to obtain such goods and/or services following the exchange rate and the promised conditions and guarantees; the right to correct, precise and valid information regarding the situation and warranty of goods and/or services; the right to have their opinions and complaints heard on the goods and/or services used; the right to obtain proper advocacy, protection, and efforts to resolve consumer protection disputes; the right to be treated or served correctly and honestly and not discriminatory; the right to receive compensation and/or replacement, if the goods and/or services received are not following the agreement or not correctly.

According to Article 7 UUPK, the obligations of the entrepreneurs: a. to act in good faith in conducting the business; b. to provide correct, clear and truthful information concerning the condition and warranty of the goods and/or services and provide an explanation on the use, repair, and maintenance; c. to treat and serve the consumers properly and honestly and nondiscriminatively; d. to guarantee the goods and/or services produced and/or traded based on the general quality standard provisions of the goods and/or services; e. to provide the opportunity to the consumers to test and or/try on certain goods and/or services and provide warranty and/or guarantee on the produced and/or traded goods; f. to provide compensation, redress and/or substitution for the damages caused by the use, consumption and application of the goods and/or services; g. to provide compensation, redress and/or substitution if the goods and/or services received or used do not accord with the agreement.

One of the parties may not keep their promise to carry out their obligations, so it is categorized as having broken a promise or being in default. The definition of default is negligence in the form of four kinds (Subekti, 2000:50); 1) Not doing what it's supposed to do; 2) Carrying out something but not as promised; 3) Doing what was promised, but it was too late; 4) Doing something that, according to the agreement, should not be done. Therefore, if one party defaults, it must be responsible for replacing costs, losses, and interest.

Purchase of goods with a pre-order system that makes payments in advance is known in the Civil Code with the term deposit or down payment, following Article 1464 of the Civil Code; "If the sale has been executed with the payment of a deposit, none of the parties can cancel the sale by retaining or returning the deposit." If the one who gave the deposit does not comply with the agreement, the money is considered lost, while if the person who receives the deposit fails to abide by the agreement, the money is usually returned. E-commerce with a pre-order system that results in losses for consumers, consumers are entitled to compensation and/or replacement if the goods and/or services received are not following the agreement or not correctly. This follows the provisions of the ITE Law, which state that anyone can file a lawsuit against a party operating an electronic system and/or using information technology that causes losses (Burhanuddin, 2011:137).

Trading in cyberspace is a transaction across geographic boundaries that connects consumers and business actors from various countries. If a dispute arises, the parties can choose the Online Dispute Resolution (ODR) or Arbitration and Alternative Dispute Resolution (APS) method online to make it more practical, cost-effective, cheap, and effective (Cindy & Jeumpa: 17). Arbitration and online APS are not much different from conventional systems, which differ only in the use of electronic means and their implementation. In online arbitration, case registration, selection of arbitrators, submission of documents, deliberation of arbitrators in the case of an arbitration tribunal with more than one arbitrator, making decisions, and notification of decisions will be made online. Online dispute resolution began in 1995 with the establishment of a Virtual Magistrate at the Vilanova Center for Law & Technology.

Based on the above explanation, the case that supports this research was based on the District Court Decision Number: 629/Pdt.G/2020/PN. JKT.SEL. As for the case position, the plaintiff Celvin ordered the bag through a website owned by the defendant Satrya Putra Adhitama, with the shop name "NAMASTUDIOS." The incident began when the plaintiff, as a reseller, ordered various bags on a pre-order for a certain period, which would then be resold. From 2018 to 2019, the two cooperated well, but at the end of 2019, the number of bag orders ordered by the plaintiff did not match the amount sent by the defendant. Orders via the website, SMS, or Whatsapp application are often far or consistently inconsistent from the agreed pre-order time, so the plaintiff uses the agreement as a guarantee so that the defendant keeps his promise, but in fact, the defendant remains negligence for various reasons, such as; the bag production department had a problem and forced the plaintiff to understand the situation.

The plaintiff, who felt that he was being played with, finally agreed to a notary named LalitaiswariJanaputri, S.H., M.Kn. who became a defendant, with deed number: 03 dated January 31, 2020, it was stated that the plaintiff had paid the purchase price of the bag to the defendant with the first period on 30-04-2020 as many as 4,000 bags and the second period on 30-07-2020 as many as 8,000 bags, thus the total number of bags ordered is 12,000, as evidenced by Proof of Deposit/Book Transfer between BCA Accounts dated January 30, 2020 for Rp.350,000,000 (Three hundred and fifty million rupiahs) and dated January 31, 2020 for Rp.350,000. 000,- (Three hundred and fifty million rupiah) from the plaintiff's account to the defendant's account, so that the total received by the defendant is Rp. 700,000,000, - (seven hundred million rupiah). However, the defendant only sent 7 (seven) sacks totaling 265 bags on July 19, 2020; another reason was that they could not produce. However, from the social media status of Instagram (Namastudios), the defendant produced tens of thousands of bags in June 2020, so it can be seen that the defendant is not committed and inconsistent.

According to Article 1338 of the Civil Code paragraph (3), the agreement must be based on good faith according to the principle of *pactasuntservanda* that the deal made legally applies as law for those who make it so that the defendant is clearly in default because he does not fulfill his obligation to send the order bag to the plaintiff according to the amount paid. Therefore, related to Article 1250 of the Civil Code regarding reimbursement of costs, losses and interest, the total material losses suffered by the plaintiffs amounted to Rp. 1.054.200.000,- (One billion fifty-four million two hundred thousand rupiah), this dispute decreased the economic situation and reduced the stability of the plaintiff's business relationship, and resulted in the health of the plaintiff, so that he suffered an immaterial loss of Rp. 10,000,000,000, - (Ten billion rupiah).

Based on the case above, the judge of the South Jakarta District Court on Wednesday, September 1, 2021 made a decision which stated; partially granted the plaintiff's claim, noted that the defendant had defaulted, and sentenced the defendant to pay compensation to the plaintiff in the amount of Rp. 700,000,000 - (seven hundred million rupiah) plus a fine of Rp. 10,500,000,- (ten million five hundred thousand rupiah), rejecting the plaintiff's claim for the others and the rest, and punishing the defendant for paying all costs incurred in this case amounting to Rp 1,511,600,- (one million five hundred eleven thousand six hundred rupiah). Thus, the form of legal protection for consumers who are suffered loss by the pre-order sales system has been protected both by laws and regulations and law enforcement officials, it can be seen from the case that the judge has made the appropriate decision of what is indeed the right of the consumer or plaintiff.

IV. CONCLUSION

The pre-order system in e-commerce is considered valid according to positive law as long as the conditions for the agreement's validity regarding a specific matter or object being traded are clear in type and amount, even though the thing will only exist later date. If, in the implementation of e-commerce, consumers receive bad treatment from business actors, they can submit dispute resolution efforts through BPSK in litigation or non-litigation.

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