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A LEGAL REVIEW OF CONSUMER PROTECTION IN ELECTRONIC TRANSACTIONS

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Abstract
The rapid development of technology has led to advances in all areas, including business and transactions. This ease of doing business is accompanied by the availability of supporting technologies and networks. Electronic transactions (e-commerce) have proved to be a major breakthrough, enabling consumers to save time by eliminating the need to visit a seller's premises or to interact face-to-face with business operators. Obviously, this convenience leads to greater comfort and satisfaction for consumers, as they do not have to spend excessive amounts of time. On the other hand, this progress also has negative consequences, in particular when problems arise with goods received that do not correspond to the pictures displayed. Disputes can also arise from unsatisfactory relationships between consumers and traders. The underlying problem is that consumer protection is not comprehensively and clearly regulated in the current legislation on online transactions and consumer protection. Therefore, there is a need for more specific legislation to provide adequate legal protection and legal certainty for every citizen. The research method used in this study is normative legal research. The aim of this study is to examine the relationship between consumers and economic operators and the legal protection afforded to consumers in electronic transactions.

Keywords: consumers; electronic transactions; legal protection

1. INTRODUCTION

Advances in information and communication technology have brought about many changes in social lifestyles. Technology is developed in response to human needs, primarily to facilitate communication and transactional processes (Juwana, 2002). The history of human development can be seen as the evolution of tools and technology (Endeshaw, 2001). Information technology has not only changed the way we communicate and transact, it has also opened up new ways of doing business (Asnawi, 2004). In addition, the development of information technology has made the world borderless, leading to significant and rapid social change (Ramli, 2004). As a result, the global economy is likely to evolve according to its own logic. These developments allow for the unrestricted flow of information over the Internet, increased international movement of goods and people, and can potentially give rise to legal issues with broad societal implications that need to be addressed by legal experts (Masinambow, 2000).

The development of technology and information flows affects the existing economic sector, one of which in this case is called e-commerce, and the operation of this activity is influenced by the Internet network (Purbo & Aang, 2000). The rapid growth of Internet use is something that makes the Internet an effective choice of media for companies to introduce and sell their goods and services to potential consumers. E-commerce is a modern business model which, in this case, does not bring businessmen and consumers together directly and without the use of signatures (Suparni, 2001). The presence of e-commerce will certainly be a competition between small, medium and large market players.

In e-commerce business transaction activities, it is created practically without the use of paper and does not meet directly, so that in this case, e-commerce becomes a new breakthrough in the development of existing businesses or businesses. In addition to the convenience and the positive sides, the presence of e-commerce itself can also have a negative impact, which in this case relates to the security and protection that will be given to consumers. The emergence of this problem will certainly harm consumers and will cause legal problems (Latifulhayat, 2002). The legal problems that arise may concern the legal protection of consumers, which is urgent in the case of consumers who make online purchases from economic operators from abroad. In the case of receiving the ordered goods, there is a difference between the ordered goods and the goods that arrive and experience physical defects and the delivery process with a long period of time (Barkatullah, 2003). In addition, the legal problems that arise are related to fraud committed by business actors, in this case the shop offered is fictitious.

It is also possible that issues may arise within the domain of e-commerce itself. Indeed, there have been instances where traders have alleged that they have not received payment from consumers, despite consumers having in fact settled their purchases and provided evidence of this transaction (Badrulzaman et al., 2001). Given the inherent challenges and characteristics of e-commerce, consumers can, on occasion, find themselves the victims of fraudulent activity and thus require legal protection. In order to provide such protection, consumers must also be aware of and adhere to several rights, including (Syawali & Imaniyanti, 2000):

the right to security and safety;

the right to access information;

the right to vote;

the right to be heard; and

the right to a healthy environment.

These rights are universal to all consumers. According to the Guidelines for Consumer Protection of 1985, published by the United Nations, it is stated that "Consumers everywhere, of all nationalities, have basic social rights". This means that these basic rights are the right to clear, accurate and honest information, the right to redress, the right to basic human needs (adequate food and shelter), the right to a good and clean environment and the duty to protect the environment, and the right to basic education. The United Nations calls on all its members to enact and implement these consumer rights in their respective countries (Nasution, 2002). Legal protection for consumers can be provided by (Syawali & Imaniyanti, 2000):

establishing a consumer protection system that incorporates access to information and guarantees legal certainty;

protecting the interests of consumers in particular, as well as to safeguard the interests of business operators;

enhancing the quality of goods and services;

providing consumers with legal protection against deceptive and misleading business practices;

integrating the implementation, development, and regulation of consumer legal protection with protections in other fields.

The practice of e-commerce transactions itself still raises many legal issues, which in this case tend to cause losses to consumers. The e-commerce transaction is a contract of sale and purchase, which is the same as the traditional purchase and sale usually carried out by the community. The only difference is the medium used. The e-commerce transaction itself uses electronic media, namely the Internet, so that in terms of the agreement between the two parties or this contract is created through online activities. In addition, the e-commerce transaction itself sometimes raises issues of dispute resolution. In terms of the resolution of this dispute, whether the application of the law of the defendant's country or based on the law of the plaintiff's country or based on the law of the country of the economic operator or consumer itself.

With such characteristics of e-commerce, consumers are expected to face various legal issues and legal protection regimes. In the case of online transactions, legal protection for consumers needs to be implemented and enforced with an international approach through legal harmonisation and cooperation with other law enforcement agencies (Riswandi, 2003). The need for legal instruments to be applied in the form of new laws or regulations and legal rules that are tailored to the needs of society. Without the protection and legal certainty for consumers, this country will only become a place for dumping goods and services that are not of high quality, which is more dangerous, worrying about the welfare of people who are aspired to be more difficult to realise in accordance with their expectations (Sudaryatmo, 1999).

Legal protection by the state for its citizens, or in this case for consumers, who are in a weak bargaining position and need to be addressed immediately. In commercial transactions on the Internet, the traffic between economic operators and consumers is getting closer and more open. Cooperation between one country and another is needed, in this case to regulate a pattern of relations between economic operators and consumers, as well as a system of legal protection for consumers themselves. The legal protection of victims of e-commerce transactions cannot be assessed and provided from only one aspect; it must, of course, be regulated in a legal system that is able to accommodate and provide simultaneous and comprehensive protection. The existence of the Consumer Protection Act is a milestone in the development of legislation in the field of consumer protection. This law regulates consumer protection policy in terms of both substantive and formal law, as well as the settlement of consumer disputes (Samsul, 2004). In addition, the development of man-made technology is not always positive, but can also have a negative impact on its users if not used properly. Of course, in addition to the Consumer Protection Act, there is a need for better implementation of laws relating to electronic transactions. This combination of existing laws is expected to have a significant impact on consumers and economic operators themselves. With regard to the problems that arise in the field of e-commerce itself, the author would like to know how the relationship between economic operators and consumers and the legal protection of consumers who carry out electronic transactions are affected.

2. METHOD

The method of approach used in this legal research is normative juridical. This is done by analysing primary legal materials, secondary legal materials and tertiary legal materials using normative and qualitative juridical analysis and then systematically arranging them. The types of legal materials that will be used in accordance with the objectives of this material discussion, namely Primary legal materials consisting of Indonesian Law No. 8 of 1999 on Consumer Protection and other laws and regulations related to the subject matter.

3. RESULTS AND DISCUSSION

Many changes and developments have taken place in the development of community life, both modern and traditional. One of these has to do with the production process of consumer goods and the pattern of relationships between consumers and economic actors themselves. In traditional societies, consumer goods are produced by simple methods or processes, whereas in the development of modern society, goods are produced on a mass scale, thus creating a society that uses or consumes goods and services on a mass scale (mass consumerism) (Bays, 1981). In relation to this development, the bargaining position of consumers is also influenced by marketing concepts that change over time, which are characterised as follows (Barkatullah, 2017):

Focusing on Products and Business Operators

This approach is characterised by the development of quality products based on intrinsic values and prevailing standards. Its primary objective is to generate profit by persuading consumers to exchange their money for the products offered by business operators.

In the 1960s

During the 1960s, the shift in marketing towards consumers was executed in a somewhat different manner. Although the core objective remained profit generation, the methods and strategies employed became more expansive through the adoption of a new marketing system based on the 4P strategy (Price, Product, Promotion, and Place). This system encompasses considerations related to product development, pricing, promotional strategies, and distribution channels.

Creating a New Concept in Marketing

This innovation is marked by the transformation of the traditional marketing concept into a comprehensive marketing strategy. Fundamentally, this strategic approach reorients the focus from solely the consumer or the produced product to a broader consideration of the consumer within an expansive external environment. Additionally, the marketing objective shifts from merely achieving profit to delivering benefits to all stakeholders.

Due to the series of changes in the concept, the bargaining position of consumers in the purchase of products has become weaker, which in this case requires a legal umbrella and legal protection for consumers with a broad mind and great will. Broad thinking itself also requires someone with broad legal insight, so that it cannot be studied from one legal aspect alone, but must be studied from various aspects. This is very important because the interests of consumers themselves exist from the very beginning of the production of goods and/ or services, during the production process, during distribution, until they reach the hands of consumers. This significant development has spurred the growth of the production and trade sectors, which in reality indirectly creates the power of the position of economic actors who are higher than the consumers themselves. Some economic actors in the process of producing goods and/or services often ignore the interests of consumers. This is because business actors feel that in this case business actors have a high position compared to consumers themselves. In this case, consumers are often forced to accept a product of goods and/or services they buy, even if it does not meet their desired taste.

Consumers are, in this regard, placed in a weak bargaining position. This is substantiated by several arguments, including (Ougthon & Lowry, 1997):

mass production of goods;

changes in the consumer market;

modern advertising;

an unbalanced bargaining position between consumers and business operators;

the notion of paternalism.

In e-commerce itself, the most common and frequent negative effects are related to the quality of the goods or their condition, unclear and misleading information, counterfeiting of products or brands, delays, the release or irresponsibility of economic operators. The weakness of consumers in online transactions is increasingly felt with the emergence of a standardised contract clause. In a standardised contract, the principle of freedom of contract is implemented. Consumers can reject or accept (take it or leave it) a contract offered by the company itself. In this case, business actors feel socially, economically, psychologically and politically superior to consumers (Shidarta, 2004). In a transaction, consumers are in a very weak position and do not have sufficient bargaining power when dealing with business actors. This weak position of consumers promotes the idea of an integrated conceptual framework in addressing the relationship between consumers and business actors (Ougthon & Lowry, 1997).

The relationship between economic actors and consumers is a relationship that is, in this case, continuous and ongoing. This relationship exists because both want each other and there is a fairly high degree of dependency between one and the other. Business actors themselves really need and are very dependent on consumers, in this case as consumers or end users of existing products. Without the support of consumers, business actors will not be able to maintain their business continuity. Conversely, the needs of consumers are highly dependent on the production of the economic actors themselves (Syawali & Imaniyanti, 2000). This ongoing relationship between business actors and consumers begins and occurs during the production, distribution, marketing and offering of existing products. Business actors easily ignore the rights of existing consumers. This, combined with the low level of knowledge and awareness of consumers themselves, makes it easy for business actors to treat consumers as a resource to be exploited for profit, without recognising the losses and without taking responsibility for a product that harms the community itself.

The limited awareness and understanding of consumers by business actors and the government facilitates their manipulation. In instances of justice, the government often disregards the interests of consumers by giving precedence to the arguments and perspectives of business actors. The legal apparatus has not effectively instilled a sense of security in consumers, exacerbating their vulnerable position. Additionally, law enforcement frequently lacks the capacity to impose and enforce sanctions with certainty and firmness. This underscores the necessity for enhanced legal enforcement and protection measures for consumers and other users of goods and services. When implemented in accordance with the prevailing regulations, this will effectively address the prevailing unfavourable relationship between consumers and business actors.

The issue of legal protection for consumers has become increasingly problematic in the context of global competition. This legal protection is imperative in all business competition and the numerous products and services that cause and place consumers in a weak bargaining position (Sood, 2002). The necessity for consumer protection regulation in a given nation is typically determined by a consideration of both the prevailing actuality and the urgency of the situation within society. This evaluation of necessity is informed by the legal protection for consumers that is deemed necessary to be enforced by the government, based on the situation that is or will develop and affect the fate of the wider community.

It is imperative that legal protection for the community is realised in the form of legal certainty, which in this case is the right of consumers. In light of the significance and role of protection for vulnerable consumers, it is essential that they are accorded sufficient legal protection. This prevailing policy is anticipated to encompass all consumer rights that should be obtained in order to engender and foster consumer confidence, thereby promoting their participation in transactional activities and enhancing business online (Zhao, 2005).

Consumer rights can be broadly categorised into three fundamental principles: the right to prevent loss, the right to obtain goods and services, and the right to receive adequate problem resolution in the event of issues arising during the transaction process (Miru, 2000). In order to provide legal protection, the government of Indonesia has issued and ratified a regulation relating to Law Number 11 of 2008 concerning Electronic Information and Transactions. The regulation encompasses a wide range of issues, including the governance of electronic information, the implementation of electronic systems, the realm of electronic transactions, the administration of domain names, the safeguarding of intellectual property rights, the protection of personal rights, the prevention of misuse of information technology, the resolution of disputes, the roles of government and society, investigative procedures, and criminal provisions.

It is evident that Law No. 11 of 2008 concerning Electronic Information and Transactions has yet to establish comprehensive regulations for consumer protection in the context of e-commerce transactions, as substantiated by the annexes and the contents of each article. Until such time as the aforementioned regulations are fully implemented, it is the view of the author of this article that the Indonesian consumer will continue to rely on the provisions of the Consumer Protection Law for the safeguarding of their rights. While the scope of the Consumer Protection Law does not extend to the specifics of legal protection for consumers engaged in online transactions, it does generally regulate consumer rights and legal safeguards. Within the provisions of the aforementioned law, the rights of consumers are delineated in Article 4, which encompasses both the rights of consumers and the obligations of business operators in relation to transactional activities and the promotion of their products. This encompasses the stipulation to furnish information in a lucid, precise, and verifiable manner, accompanied by adequate elucidations concerning the utilisation, restoration, and maintenance of the products. Furthermore, business operators are obliged to ensure that the standards and quality of their goods comply with the applicable regulations. In addition to the substantive legal protections pertaining to rights and obligations, business operators are also accountable for their products. Consumers are thereby entitled to claim compensation for any goods and/or services purchased that fail to meet the stipulated criteria and are not clearly labelled. The overarching objective of consumer protection, as articulated in Article 2 of the Consumer Protection Law, is to ensure comprehensive safeguards for consumers (Consumer Protection Law No 8 of 1999):

to enhance consumer awareness, capability, and independence in safeguarding themselves;

to elevate the dignity and status of consumers by shielding them from the negative effects associated with the use of goods and/or services;

to strengthen consumer empowerment in selecting, determining, and asserting their rights as consumers;

to establish a consumer protection system that incorporates elements of legal certainty, transparency, and accessible information;

to foster business operators' awareness of the importance of consumer protection, thereby promoting honesty and accountability in commercial practices;

to improve the quality of goods and/or services, thereby ensuring the continuity of production activities as well as protecting the health, comfort, security, and safety of consumers.

It is imperative to emphasise that the predominant factor contributing to consumers' vulnerability in this context is their limited awareness of their rights, primarily due to inadequate consumer education. In addition to the various provisions within the Consumer Protection Law, consumers may, in certain instances, also be safeguarded under criminal law – specifically, the Penal Code. Furthermore, the protection of consumers in e-commerce transactions can be bolstered by insurance provisions. From the foregoing, it is abundantly clear that the protection afforded to consumers – particularly those engaging in business transactions through electronic technology (e-commerce) – must be updated. The urgency of enacting regulations to address this issue is exceedingly high and must be realised, as the current legislative framework, especially the laws governing consumer protection, has not accommodated these needs.

4. CONCLUSION

The relationship between business actors and consumers is one that is characterised by continuous interaction and mutual dependence. This relationship is initiated and maintained throughout the various stages of production, distribution, marketing and product offering processes. However, there is a tendency among business actors to disregard the rights of existing consumers. This is further compounded by the limited awareness and knowledge of consumers, thereby facilitating the exploitation of consumers by businesses seeking to maximise profit, without regard for the subsequent consequences or the responsibility for products that are detrimental to the community.

In addressing this challenge, the government has promulgated regulations pertaining to electronic transactions and consumer protection. Specifically, this encompasses Law Number 8 of 1999 concerning Consumer Protection and Law Number 11 of 2008 concerning Electronic Information and Transactions. Nevertheless, the prevailing regulations have proven inadequate in fully addressing the issues associated with electronic transactions, necessitating the establishment of additional regulations that can effectively tackle the challenges posed by e-commerce.

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