

Consumer Protection in E-Commerce Transactions in Indonesia

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Abstract

The history of e-commerce in Indonesia has been known since 1996 with the advent of <http://www.sanur.com/> sites as the first on-line bookstores. Although it was not too popular, in 1996 it started popping up various sites that perform e-commerce. Throughout the years 1997 – 1998, the existence of e-commerce in Indonesia a little bit neglected because of the economic crisis. Since 1999 until the present, e-commerce has re-become a interesting phenomenon although it remains limited to a minority of the Indonesian people are familiar with the technology. Article 1313 of the Civil Code defines "agreement is as an act pursuant to which one or more individual bind themselves to one another". It means that the parties of the agreement in real life are the same as with the parties involved in an e-commerce agreement. The requirement of the validity of treaty is also no different. The requirement is "must be consent of the individuals who are bound; must be capacity to enter into an obligation; must be a specific subject matter; and must be a permitted cause."

Keywords: Consumer protection, e-commerce transaction

1. Introduction

This current era of globalization is characterized by increasingly transparent world. The relationships among sovereign countries do without any more restrictions from country to country (borderless). Obviously, this is caused by the progressive development of communication technology. Civilization today's world is characterized by the phenomenon of advance in information technology and globalization that are taking place in almost all areas of life. The globalisation began in the early 20th century due to the promotion of the revolution of transportation and electronics that promoted and accelerated trade among nations. It was also caused by the increasing of goods and services movements.¹

The technology in this context was created to expand along with the need for people to make life better than the previous one. Development of the national economy in the era of globalization must be able to support its business growth in order to produce various goods and services that have substance technology. In long term purpose, the development can improve the welfare of the community. In other words, a service obtained from the trading is done without causing a loss to the community.²

As a media technology and information, internet plays an important role in the globalization era. Internet, which first appeared in 1969 in the United States, was a computer network at the University of California at Los Angeles, University of California at Santa Barbara, University of Utah and the Stanford Research Institute.³ At first, the internet was only used as a medium for communication and a place to get a variety of information among the public. But over time, the function of the Internet also has turned into a business tool or potentially huge market and great demand by the public. With the development of information and communication technologies then indirectly has changed the behavior and lifestyle of the people globally.⁴

Internet has undergone significant development and its use has expanded to cover activities of business, industry and households. The development and advancement of the internet basically has driven advanced in information technology. The use of the internet is increasingly widespread in business, industry and households have changed man's view. Those activities as mentioned are originally monopolized by physical activity, but in cyberspace, they do not require physical activity. In global communications network as people live nowadays, the world becomes as a shrinking world and in the same time actually, it is reducing the field of sovereignty and state borders following the order of society. Likewise, the development of technology and information in Indonesia, buying and selling goods was initially conventional slowly turning to buying and selling goods electronically using the internet known as electronic commerce (e-commerce).

¹ See Juwono Sudarsono, "Economic Globalization and Indonesian Democracy", *Prisma*, No. 8, XIX, (1990).

² Hikmahanto Juwana, *Economic of Law and International Law*, Lentera Hati, Jakarta, 2002, p. 23.

³ Mariam Darul Badruzzaman, *Compilation of Treaty*, PT. Citra Aditya Bakti, Bandung, 2001, p. 267.

⁴ Ahmad M. Ramli, *Cyber Law and IPR in Indonesian Legal System*, Refika Aditama, Bandung, 2004, p. 42.

The history of e-commerce in Indonesia has been known since 1996 with the advent of <http://www.sanur.com/> sites as the first on-line bookstores. Although it was not too popular, in 1996 it started popping up various sites that perform e-commerce. Throughout the years 1997 – 1998, the existence of e-commerce in Indonesia a little bit neglected because of the economic crisis. Since 1999 until the present, e-commerce has re-become a interesting phenomenon although it remains limited to a minority of the Indonesian people are familiar with the technology. In this context, e-commerce can be understood as the activities of trade transactions of goods and services through electronic media which provides convenience in transaction activity by consumers on the internet.

According to Didik J. Rachbini,¹ information technology and electronic media are considered as a symbol of the pioneer, which will integrate the entire system of the world either in terms of social, cultural, economic, or financial. From small systems locally and nationally, the process of globalization in recent years moves fast, even too fast towards a global system. In addition, the globalization and free trade are supported by telecommunications and information technology advances have expanded the space for the flow of goods and services that are crossing the boundaries of a country. In the perspective of the future of the world, thus, it will become a large village in which border of states become blurred.

Along with the entry of Indonesia into the era of globalization, form of society is turned into an information society. This is caused by the people who are always trying to simplify and speed in obtaining the information they need. Therefore, they use a computerized system as one part of the information technology to obtain information accurately and quickly. In this condition, it can be said that the invention of the computer as a product of science and technology has merger between the telecommunications, media and computer. Those combination then create a new tool called the internet (Interconnection Networking).

Indonesia ranks fifth all Internet users in Asia, after China, Japan, India and South Korea. Nielsen survey shows the number of internet users in Indonesia in 2011 reached 40-50 million and will grow 20% per year until 2015. The data also show that Indonesia is ranked 11th in the world in terms of the number of internet users, or 12.3% of total population density. Still sourced from Nielsen survey data, in March 2010 there was 68% of the internet users who do online shopping. As a country with a population the 4th largest in the world with a total population of 237 million, it is a tremendous potential for business people who are able to take advantage of opportunities to trade / transactions online (e-commerce). Based on data from the E-commerce Association of Indonesia (IDEA), the potential for trade through the virtual world is very large indeed. In Jakarta alone, the data states for the realization of e-commerce reached Rp 30 trillion during 2012.²

Utilization of information technology right now is an important part of the activities of the various components of society, private sector and government. This is an evidence of the widespread use of information technology in various and strategic sectors such as in banking (e-banking), government (e-government), commerce (e-commerce) and other business transactions. In the field of trade, internet began widely to be used as a business activity due to its contribution to efficiency issue. Electronic trading activity conducted via the internet digital media is then called by e-commerce. Indeed, the buying and selling in the electronic trade (e-commerce) is an important part in cyber law.

In e-commerce transactions, they create business transactions more practical paperless and can be done without meeting in person (face to face) amongst the parties of the transaction. So, it can be said that e-commerce becomes a driver of business of the new economy in the field of technology. In addition to these advantages, there are negative aspects of the development of this technology related to security issues and other forms of fraud are likely to harm consumers in the transaction by using the internet (e-commerce).³ In this context, it is appropriate what is raised by Durga Surekha. He states that:

"Globalisation and liberalisation of trade and business has resulted in many products and services being available to the consumers. Growth in the economy has resulted in the increase of in the purchasing power of the middle class section, which is the largest segment of the population. This has necessitated

¹ Didik J. Rachbini, *Myth and Implication of Globalization: Notes of Economic and Financial Site*, Yayasan Obor, Jakarta, 2001, p. 3.

² Anonim, *Shopping Online in E-commerce*, <http://ekonomi.kompasiana.com/marketing/2012/11/18>, html. Accessed February 14th, 2014.

³ Atif Latifulhayat, "Protection of Personal Data in Trading Electronically (E-commerce)", *Journal of Business Law*, Vol. 18 march 2002, p. 24.

giving high priority for the protection of the consumers and promotion of responsible consumer movement in the country".¹

In connection with the development of information and communication technology in which the goods and / or services can be traded to consumers past the boundaries of regions and countries, consumer protection will always be an important issue to be noted. It is because the issue is no longer as a symptom of regional alone but has become a global problem that hit consumers across the world. The consumer protection is a major factor in the success of e-commerce. This is because the consumer becomes an important party to determine the viability in e-commerce in the era of globalization.

In Indonesia, consumer protection has begun to be considered important since the enactment of the Law No. 8 of 1999 on Consumer Protection (hereinafter referred to CPL) on April 20, 1999. The CPL not only put strong bargaining on consumers to enforce their rights, but also it creates a more fair rules for all parties. According to Article 3 letter c of CPL, the purpose of consumer protection on goods and services is to increase consumer empowerment in selecting, specifying, and loading their rights as consumers. In terms of the legal protection of the consumer, there are some consumer rights that must be protected and respected. Those rights are such as the right to security and safety, the right to get information, the right to vote, the right to be heard, the right to be compensated, and the right to get fresh environment.²

Based on some elaboration as mentioned above relating to the legal protection of the consumer in e-commerce transactions, the focus of this paper is to discuss the essence of the consumer protection in e-commerce transactions in Indonesia.

2. Nature of Consumer Protection in E-Commerce Transactions in Indonesia

The consumer protection is all the effort that guarantees the legal certainty to consumers. Based on the Article 1 number 1 of the CPL, "consumer protection is all the effort that guarantees the legal certainty to provide protection to consumers". With the implementation of legal protection for consumers in e-commerce transactions in the era of global trade, the position of consumers will be protected by the Law. Their position also can be minimalised from abusing of businessman to achieve maximum profit.³ In other words, it can be said that the presence of e-commerce allows the creation of fair competition among small businesses, medium, and large enterprises in the capture of market share.⁴

In relation with the Civil Code, Article 1313 of the Civil Code defines "agreement is as an act pursuant to which one or more individual bind themselves to one another". The parties of the agreement in real life is the same as with the parties involved in an e-commerce agreement. The party businesses in this context will be either individual or legal entities (e-merchants) who offer products or services. Consumers are buyers/users of services available in e-commerce. For the validity of a treaty, article 1320 of the Civil Code requires 4 (four) conditions namely: "must be consent of the individuals who are bound; must be capacity to enter into an obligation; must be a specific subject matter; and must be a permitted cause."⁵

Besides the Civil Code, the agreement of e-commerce is also provided for in article 18 paragraph 1 of the Law No. 11 Year 2008 on Information and Electronic Transactions (IET). The law states that "Electronic Transactions poured into electronic contracts binding on the parties". The electronic transaction is usually manifested in the form of electronic contract (contract online) which is containing an electronic document of transactions or electronic commerce.

The essence of legal protection of the consumer is needed because the consumer in e-commerce transactions is in a weak position. The difference interests between businesses and consumers cause loss of life or property in the consumer and not obtaining the optimal benefits from the use of goods and / or services. The absence of legal protection for consumer is expected to provide balancing of legal position between consumers and businesses in e-commerce transactions. Obviously, this situation will consider the "legality of the agreement" and the system of "security transactions". The purpose of it is to provide protection for the consumer in order to avoid acts of arbitrary businesses that could harm the rights of consumers particular in the area of fraud and unfair

¹ Durga Surekha, *Consumers Awareness about Rights and Grievance Redressal*, India, 2010, p. 19.

² Husni Syawali and Neny Sri Imaniyati, *The Law of Consumer Protection*, Mandar Maju Bandung, 2000, p. 39.

³ Endang Sri Wahyuni, *Aspect of Certificate and its Connection to Consumer Protection*, PT. Citra Aditya Bakti, Bandung, 2003, p. 90.

⁴ Farizal F. Kamal, *Cyber Business*, ed.3. Alex Media Komputindo, Jakarta, 1999, p. 1.

⁵ Subekti, *The Treaty*, ed. 12. PT. Intermasa, Jakarta, 1990, p. 15.

competition.¹ Related to this point of view, Yusuf Sofie states that desire to be achieved in the protection of consumer is creating a sense of security for consumer to fulfill their needs.²

2.1 Legality of the Agreement

2.1.1 *The Agreement of E-Commerce Transaction in Consumer Protection Law (CPL).*

According to Johanes Gunawan,³ legal protection of the consumer in e-commerce transactions can be made at the time prior to the transaction and / or at any time after the e-commerce transactions. With the absence of legal protection for consumers is expected to provide a balanced legal position among consumers and businesses. Consumer law is defined as the overall principles and rules of legal norms that regulate the relationship and problems between the various parties with each other with regard to the goods and / or services consumers (consumers and businesses). CPL is part of the consumer law which includes the regulatory principles and also contain the interests of consumers protection.⁴

In line with the consumer law in e-commerce agreement, Ahmad M Ramli⁵ stipulates some issues to be considered such as:

- a. Businesses must provide correctly, clearly and honestly information to consumers with goods and services offered.
- b. Protection for consumers of all the actions of businesses from offered products that is incorrect or misleading.
- c. Protection to be able to obtain the goods in accordance with the agreed or offered products.
- d. Protection for consumers to get compensation due to the product or service that is used does not comply with the agreement.
- e. Protection to obtain the promised goods or offer.
- f. If the exemption clauses contained in the agreement of liability of the businesses, the clauses should be informed clearly and easily seen.
- g. Business actors are obliged to pay special attention in terms of advertising and marketing to consumers of children, parents, and others who are not able to fully understand the information provided.

In connection with the development of information and communication technologies where goods and / or services can be traded to consumers past the boundaries of regions and countries, legal protection for consumers will always be an important issue that is interesting to be noted and protected regarding the consumers rights. This is in line with article 3 of CPL. The article states the purpose of the consumer protection, as following:

- a. Raising awareness, ability and independence of the consumers to protect themselves;
- b. Raising the dignity of consumers by avoiding themselves from negative access of using goods and / or services;
- c. Improving consumer empowerment in selecting, specifying, and demanding their rights as consumers;
- d. Creating a consumer protection system contains elements of legal certainty and transparency of information, and access to information;
- e. Raising awareness of businesses about the importance of consumer protection so that the growing attitude of honest and responsible in the attempt; and
- f. Improving the quality of goods and / or services that guarantee the continuity of the production of goods and / or services, health, comfort, security and safety

According to Bagus Hanindyo Mantri,⁶ CPL has not been able to protect the consumer in e-commerce transactions due to limited understanding of the business actors who do only in the territory of the Republic of Indonesia. It is also because of the limitations of the consumer rights set out in CPL that has not reached purchase and sale transactions in cyberspace. Legal protection to consumers should set including the consumers interest in point of view of the business, consumer, product, and e-commerce transactions.

¹ Bagus Hanindyo Mantri, *Legal Protection of Consumer in E-Commerce Transaction*, Thesis, Diponegoro University, Semarang, 2007, p. 56.

² Yusuf Sofie, *Consumer Protection and its Legal Instruments*, PT. Citra Aditya Bakti, Bandung, 2003, p. 30.

³ Yohanes Gunawan, *Consumer Protection Law*, Parahyangan Catholic University Press, Jbandung, 1999, p. 3.

⁴ Endang Sri Wahyuni, op.cit., p. 90.

⁵ Ahmad M. Ramli, op.cit, p. 25.

⁶ Bagus Hanindyo Mantri, op.cit, p.56.

2.1.2 E-commerce Transaction Agreement in the Civil Code Perspective

Conventional purchase agreement is governed by the Civil Code - called *Burgerlijk Wetboek Voor Indonesia* (BW). E-commerce itself is basically a modern model of sale and purchase transactions in cyberspace that implies innovation of technology internet as a medium for trade transactions. Thus, as long as it is not otherwise agreed, the general provisions of the purchase agreement stipulated in book III BW serves as the legal basis for e-commerce activities in Indonesia. If in the implementation of e-commerce transactions in Indonesia are caused disputes, the parties may seek settlement in terms of the agreement.

To determine the legal binding and validity of an agreement, the agreement will refer article 1320 BW to govern the validity of the agreement. The agreement required is put in 4 (four) conditions, namely:

- a. must be consent of the individuals who are bound;
- b. must be capacity to enter into an obligation;
- c. must be a specific subject matter; and
- d. must be a permitted cause.

To assess the terms of the agreement in BW, it will be seen more clearly if the requirements are outlined for each transaction. The transaction must consider the four conditions in accordance with Article 1320 BW .

a) must be consent of the individuals who are bound

In the conventional purchase agreement, the agreement can easily be known directly. Whereas in e-commerce transactions (cyberspace), the agreement cannot be given directly because it is through the electronic media in this case of the internet. "All the agreements" are an event where someone promised to others or where the two men promised each other to implement something. From these events, it will occur a relationship between two people who called the agreement. Article 1338 paragraph (1) BW states that all valid apply to the individuals such agreement are irrevocable other than by mutual consent, or pursuant to reasons stipulated by the law.

b) must be capacity to enter into an obligation

The element of capacity is one of the agreement requirements essentially. Meanwhile, in e-commerce transactions cannot be seen clearly, If the parties are involved in an agreement to have the capacity to perform a legal act due to the transactions are conducted by via internet in virtual world. This fact would be an obstacle to the fulfillment of an agreement as provided in BW.

One case related to this issue had taken place in April 2013. It was conducted by a child under the age (15 years old). The case was a fraud in the trading forum in Solo, Central Java. The fraud was committed by Hafid Hasan a teenager who deceive consumers totaling Rp 12,000,000,- He has ID caucuser – called HafidHassan (allegedly also has an ID with a different name in caucus). He sold precious metals at low prices. He sold it to one user consumer called amq09. The consumer did not have any experince in that field. Therefore, he transferred his money approxiametly Rp. 12.050.000,-.

Hafid hasan also deceived one mobile phone consumer for the sum Rp. 1,050,000,- His fraud began to unfold. Finally, he has been arrested by the police in solo assisted by information collected by the newbie.¹

c. must be a specific subject matter

In e-commerce transactions, the requirements of the validity of the agreement is the goods or services offered or sold by businesses that then the offer is accepted by the buyer. So that the goods or services as an object of sale and purchase can be enjoyed by the buyer. The provisions governing of this object is article 1332 in conjunction with Article 1333, and article 1334 BW. Article 1332 BW states that only tradeable properties may form the subject matter of agreements.

d. must be a permitted cause

In an agreement, there must be provisions that include the permitted cause especially in e-commerce transactions. It is because the permitted cause is basically the purpose of the agreement offered.

In fulfillment of e-commerce agreement also needs the goodwill (good faith) of each of the parties (Article 1338 BW) and trust between the parties. If it can be applied, it will be fulfilled agreements desired by the parties with their purchase transactions are in accordance with the terms of the agreement. It is clear that the sale and

¹ Anonim, *Judicial Analysis of Online Transactions*, <http://greatpeopleknows.tumblr.com/post/89185216164>, accessed by 10 Maret 2015.

purchase of e-commerce transactions is not contrary to public order. All the requirements of the purchase agreement has been governed and obeyed by the parties. In this context, it can be said that the target of consumer protection law is not limited to domestic products only, but it is possible at some point will need to be harmonised in terms of the consumer protection laws among countries in the region and international.¹

2.2 Transaction Security

Information technology has changed the ways of transacting in a conventional and open up new opportunities in e-commerce transactions. However, information technology is also at the same time creating new opportunities for crime. It is like a double-edged sword.²

In Indonesia, there are no special agreement of transaction security on the internet that can provide legal protection for consumers in e-commerce transactions. Transaction security in e-commerce is such as infrastructure, guarantee the correctness of personal identity of the seller or business, security payment gateway that serves as an intermediary, and security and reliability of the websites of electronic commerce has not been a major concern for businesses and consumers, especially on small to medium-scale transactions with a nominal value of transactions which are not too large, for example, buying or selling through social networks, online communities, online store, or blog websites.

However, the Indonesian government has made arrangements in general in terms of providing legal protection for consumers in e-commerce transactions, namely the Law No.11 / 2008 on Information and Electronic Transaction (IET) and the Government Decree No.80 / 2012,. It means that the demand for legal certainty for the consumer in the transaction e-commerce in terms of national legal aspects only to establish rule of law in the field. The e-commerce transactions is itself transnational in nature as well as a free market made by the parties in the "virtual world". It also has no geographical boundaries in the use of technology internet as a means of transactions. It is because the state regulations that exist today have not been able to provide protection for consumers in the transaction "cyberspace".

Johanes Gunawan states further that "these losses, among others related to the security of transactions, ranging from mismatching the type and quality of the goods promised by the business, inaccuracies time of delivery of goods, as well as the insecurity of transactions ranging from credit card payments up to the theft of consumer data," According to him, the urgency of e-commerce consumer protection is appropriate benefits, if they see the conditions, potential and prospects of the development of e-commerce in the future, especially its role in the transaction of goods and services.

As an awareness of the problem of transactional e-commerce in some countries practice individually, they formulate the rules of contract law based on the development of communication technology (IT). Some countries are already set rules that limit the scope of the contract of e-commerce on the type of conventional contract. In United States for example, it sets some regulation concerning the e-commerce transactions that provide legal protection to consumers by focusing on those settings to businesses (self-regulation). Canada also makes a law for consumer protection policy involving the role of businesses, consumers and government organizations. Similarly, Australia provides legal protection with emphasising those rules enacted by government in the form of government intervention to businesses (self-regulation) which guarantees legal protection for consumers in e-commerce transactions.³

Some important things that should be considered by consumers for securing e-commerce transactions are:

a. Reliability and security levels of website businesses.

Examining whether the websites that offer goods is completely trustworthy and whether there is a guarantee that if the sale and purchase transaction do consumers really safe. This means that the security of confidential data and credit card numbers of consumers completely secure and cannot be accessed by other parties who are not responsible. Consumers are advised to do not use a credit card that has a high credit limit to conduct e-commerce transactions, but use of credit cards with low credit limit in order to avoid opportunities for fraud by businesses.

b. Standard contracts and conditions of e-commerce transactions.

¹ Aman Sinaga, *Empowerment of Consumers Rights in Indonesia*, Directorate General of Trade Ministry, Jakarta, 2001, p.31.

² Sultan Remy Sjadeini, *Cyber Law as Security System in E-Commerce*, PT. Citra Aditya Bakti, Bandung, p. 310.

³ Abdul Halim Barkatullah, *Legal Protection to Consumer in E-Commerce Transaction Amongst Countries in Indonesia*, Postgraduate of Faculty of Law UII, Yogyakarta, 2009, p. 199.

In e-commerce transactions consumers are usually given contracts which have been stipulated in the standard shopping websites on the internet (e-commerce). Consumers in this case must be carefully read the contract clauses that existed prior express consent. Indeed, there is a principal difference between transactions in the real world and the virtual world. In the virtual world, everything is taking place fast. Consumers often feel rushed to agree on standard contract offered by internet even though consumers are not yet fully understand the contents of the contract as a whole.

c. The applicable law and competence of the forum.

One of the unique in the sale and purchase transactions of e-commerce is influential involvement of private international law. It is because the sale and purchase transactions of e-commerce is conducted without borders (cross border transactions) that will cause problems if one of the businesses located in countries that do not have cyber law. Practically, businesses in the developed countries have always had a tendency to enforce the law and the forum who are in state businesses as choice of law and choice of forum.

d. Consumers and bank customers.

Consumers who use credit cards in the buying or selling of e-commerce, specifically in relation to banking services through internet banking should also be noted the readiness of the bank. The bank itself has responsibility for the control and monitoring system as well as the operational system of businesses. Consumers in the transaction must pay attention to the reliability and security levels website businesses, because the security of transactions on the internet (e-commerce transactions) is critical in strength. Consumers and bank customers are also important to be noticed by consumers because it determines the payment system using credit cards and security in transaction through the internet (e-commerce).

3. Conclusion

Technological development is rapidly evolving and has impact to the life of every individual. Everyone spoiled by the presence of the mentioned technology, particularly the internet. Conventional forms of commerce have switched to the trade virtually or commonly known as e-commerce. In this case, the essence of this electronic commerce should give protection of law for consumers. Obviously, the legal instruments used can refer to CPL and the Civil Code. Limitations in the context of the scope of CPL gives space for the civil code to be enforced particularly Article 1320 and 1338 of the Civil Code.

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