

## **ELECTRONIC INFORMATION AND TRANSACTIONS LAW AND BUSINESS DEVELOPMENT IN INDONESIA: CONFRONTATIONAL OR ACCOMMODATIVE?**

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### **Abstract**

Technological developments, including online transactions, can no longer be avoided. But unfortunately, in carrying out online transactions themselves, the consumer is often on the very weak side. Therefore, it is necessary to have a regulation for the implementation of online business in Indonesia. This study aims to see how the Information and Electronic Transaction Law (UU ITE) is present in business development in Indonesia, especially for consumers. This research will be carried out using a normative juridical approach. The data used in this research comes from various previous research results and several legal sources in Indonesia, especially the ITE Law. The results of this study then found that article 4 in the Consumer Protection Act (UUPK) explains various rights owned by consumers. Then specifically, the ITE Law explains how to protect consumers that occur in the realm of online transactions. The presence of the ITE Law, despite its controversy in Indonesian society, can save consumers from conducting online business in Indonesia.

**Keywords:** *Online Transactions, ITE Law, UUPK, Business, Legal Protection.*

### **A. INTRODUCTION**

Today there are no modern human activities that are free from technology that can assist in completing their tasks quickly and efficiently. One of today's rapid communication developments is the internet. As a medium of electronic information and communication, the internet has been widely used for various activities, including trading. At first, trading was carried out conventionally by meeting sellers and buyers to carry out buying and selling transactions (Szymkowiak et al., 2021). However, as a result of technological advancements, the market's function as a meeting ground for demand and supply has shifted. Due to the introduction of the internet as a new medium, buyers and sellers no longer have to meet face-to-face to conduct transactions. The speed, convenience, and low cost of the internet are the primary reasons why many people utilize it, including for conducting transactions (Rangarajan et al., 2021).

E-commerce has its character in the world of commerce. This is like the vast distance that does not require the parties involved to meet directly, and the parties involved are not required to carry out transactions directly. E-commerce has two parts: business actors and trade between business actors and buyers or consumers. Buying and selling transaction activities are increasingly required to be connected to the internet media (Wang et al., 2021). For example, many trading businesses rely on the internet as a transaction medium. It's no wonder that many rely on the online system as a medium of payment because people can have more freedom to choose products such as goods or services and choose products with good quantity and quality via the internet (Hesmondhalgh, 2021).

Several factors influence the development of online transactions, namely: 1) E-commerce can reach more customers, and at any time, the information can be accessed in an up-to-date and continuous manner; 2) encourage the creativity of the seller in a fast and precise manner in distributing the information submitted periodically; 3) can create high time

efficiency, cheap and informative; 4) can increase customer satisfaction, with fast, easy, safe and accurate service (Albayati et al., 2020). Each party involved in an online purchase or sale has rights and responsibilities. A seller is a party that offers things via the Internet; hence, a seller is obligated to provide reliable and truthful information about the products offered by consumers. In addition to the right to get money from customers for the things they offer, business actors have the right to be protected against unfavorable consumer behavior in online buying and selling transactions (Karo & Sebastian, 2019).

However, online transactions also have some drawbacks. Using online transactions that do not bring together people who have online businesses and direct purchasers and where customers cannot see the desired goods in real terms (actual form and condition) might result in issues that are adverse to buyers while conducting online transactions. An example is the discrepancy between promised and delivered items, not the precise time of delivery (Ghelani et al., 2022). The phenomenon of online transactions makes the position between business actors and consumers unbalanced, consumers are often in a weak place and are more disadvantaged because they become business objects for business actors who are purely money-oriented so that it overrides product quality and consumer satisfaction (Alemany Oliver, 2022). Even though some risks and losses may continue to occur, online transaction activities are impossible to avoid, especially with the dynamics of technological developments that are now increasingly sophisticated. The online buying and selling market has also become one of the leading marketing strategies in the world, including in Indonesia (Omolara et al., 2022).

The development of online transactions has created new problems in the field of law, particularly in consumer protection law. Within the scope of legal and technological discussions, legal protection for consumers is a matter of great effectiveness in developing and applying this technology in society. So legal protection is intended to guarantee legal certainty and protect consumers. Various negative things due to the consumption of goods and services must be removed from trade because that is the goal of consumer protection. For this reason, rules and certainty are needed to guarantee legal protection for consumers who are the most disadvantaged in online buying and selling transactions.

## **B. METHOD**

This research is juridical-normative, namely research examining the basic rules and legislation regarding business development in Indonesia doctrinally due to the emergence of the ITE Law. This research uses secondary data from various written materials, such as previous research and the laws in Indonesia. Research data that has been successfully collected will soon be processed by researchers so that later the results of this research can be found (Jonaedi Efendi et al., 2018).

## **C. RESULT AND DISCUSSION**

### **1. Business Developments in Legal Protection for Consumers in Online Buying and Selling**

Buying and selling activities online is a new way that is entirely developed at this time because it may make it easier for customers to satisfy their shopping demands, internet buying and selling is a novel method that has been developed to its full potential at this time. Online transactions are an alternative because they have benefits, such as being more convenient, simple, and accessible from anywhere with an internet connection, but they also have a downside, notably the creation of legal difficulties that can hurt customers (Redjeki & Affandi, 2021). The possibility of fraud cases is also very large, caused by a lack of information that consumers often receive. Even though the validity of the transaction process has been explained in the Civil Code (KUHPperdata) in Article 1458, which states: "Buying and selling is considered to have taken place between the two parties, as soon as these people reach an

agreement regarding the object and the price, as well as the price has not been paid.” This is an additional job to provide comfort for both parties, business actors, and consumers. Due to the fact that customers have universal rights that must be safeguarded, such as the right to security and safety and the right to proper information, the necessity for legal protection for consumers who conduct online transactions is crucial (Aditya & Al-Fatih, 2021).

The requirements of Law No. 8 of 1999 on Consumer Protection (UUPK) do not accommodate consumer rights in online transactions, hence the UUPK has been unable to protect consumers in online transactions. This is due to the fact that online transactions have the following characteristics: sellers and purchasers do not meet, the media used is the internet, transactions can occur across national borders, and the goods sold can be digital goods or services such as software.

Consumer rights in Indonesia are accommodated in Article 4 UUPK, namely:

- a. the right to comfort, security, and safety in consuming goods and services;
- b. the right to choose goods and services and obtain said goods and services following the exchange rate and conditions as well as the guarantees promised;
- c. the right to correct, clear and honest information regarding the conditions and guarantees of goods and services;
- d. the right to have their opinions and complaints heard about the goods and services used;
- e. the right to obtain protection advocacy and efforts to resolve consumer protection disputes correctly;
- f. the right to get consumer guidance and education;
- g. the right to be treated or served accurately and honestly and not discriminatory;
- h. the right to obtain compensation, compensation, and reimbursement if the goods and services received are not according to the agreement or not as they should be;
- i. rights regulated in the provisions of other laws and regulations.

Then, regarding consumer rights as stated in Article 4 letter c of the UUPK, which states that consumers have the right to receive accurate and clear information about products sold by business actors, Law No. 19 of 2016 regulating Amendments to Law No. 11 of 2008 Concerning Transaction and Electronic Information (ITE Law) Article 9 regulates this subject, namely “Businesses that offer products through electronic systems must provide complete and correct information relating to contract terms, producers, and the products offered”. The provisions of Article 9 of the ITE Law provide consumers with the right to acquire accurate and comprehensive information about goods or services offered by business actors engaging in electronic commerce. Article 28 paragraph 1 of the ITE Law protects consumers in online transactions with legal protections “Every person intentionally and without right spreads false and misleading news that results in consumer losses in electronic transactions” regarding criminal sanctions in Article 28 paragraph (1) the provisions are contained in Article 45 a paragraph (1) of the ITE Law, namely “everyone who deliberately and without rights spreads false and misleading news that results in consumer losses in electronic transactions as referred to in Article 28 paragraph (1) shall be punished with imprisonment for a maximum of 6 years and or a maximum fine of Rp. 1,000,000,000 one billion”.

The inadequacies of UUPK to protect consumers in online transactions appear to extend to business actors' comprehension. Article 1 paragraph (3) UUPK what business actors mean is “every individual or business entity, whether in the form of a legal entity or not a legal entity that is established and domiciled or carries out activities within the territory of Indonesia, either alone or jointly through an agreement to carry out activities business actors in various economic fields” whereas according to the elucidation of Article 1 paragraph (3) UUPK, those included in business actors are business actors included in this definition are companies, corporations, BUMN, cooperatives, importers, traders, distributors, and others (Sujono et al., 2022).

Seeing the definition above, the purpose of business actors regulated by the UUPK is very narrow, where business actors held in the UUPK are business actors whose working area is in the territory of the Republic of Indonesia. When examined from the perspective of the features of online transactions, one of which is a cross-border commerce, the understanding of business actors in the UUPK cannot reach them if they are not on the territory of the Republic of Indonesia. Despite the fact that it does not directly control online transactions, the UUPK still applies to online shop firms operating in the territory of the Republic of Indonesia. The following articles may be considered as recommendations for handling fraud cases in online transactions:

- a. Article 8 paragraph (1) letters d, e, and f ban business actors from producing and selling goods and services that do not conform to the quality, conditions, or promises mentioned on the label, description, advertisement, or promotional sales material for such goods and services.
- b. Article 16 letters a and b states that when offering goods and services through orders, business actors are prohibited from not fulfilling orders and agreeing on a timely completion as promised and are prohibited from failing to fulfill a promise for service and achievement.

By increasing business actors' knowledge of the significance of consumer protection, a more honest and conscientious approach to conducting business can be fostered. In this scenario, in addition to UUPK, regulations that particularly control online buying and selling operations are necessary since they can provide protection for consumers and businesspeople.

Legal protection for consumers lies in a guarantee in the form of returning or exchanging goods if the goods received do not match what was ordered as described in Article 19 of the UUPK in terms of compensation made by sellers to consumers, which states that "business actors are responsible for providing compensation for damage, pollution, and or consumer losses as a result of consuming the goods and or services produced or traded" (Mak & Terryn, 2020).

Then, Government Regulation Number 71 of 2019 on the Implementation of Electronic Systems and Transactions (PP PSTE) recognizes it as a reportable electronic transaction. According to Article 48 paragraph (3), PP PSTE must contain at a minimum the following: identity data of the parties; object and specification; electronic transaction requirements; prices and costs; procedures in the event of cancellation by the parties; provisions granting the aggrieved party the right to return the goods and request a replacement product in the event of hidden defects; and the choice of law for electronic transaction settlement. Thus, electronic transactions that occur in cases can use the PP PSTE instrument as a legal basis for resolving the problem (Rosidi et al., 2021).

## **2. Responsibilities of Business Actors to Consumers in Buying and Selling Online**

Law Number 8 of 1999 for Consumer Protection (UUPK) has regulated the responsibilities of corporate actors in purchasing and selling contracts with consumers. Article 24 UUPK states: "Business actors who sell goods and services to other business actors are responsible for demands for compensation and consumer claims if:

- a. Other business actors sell to consumers without making any changes to said goods and services
- b. In a sale and purchase transaction, other business actors do not know that there is a change in goods and services made by the business actor or are not following the sample, quality, and composition."

The responsibility of business actors, according to Gunawan Wijaya, is always related to losses suffered by consumers, including in sales and purchase agreements in consumer protection law, the responsibility of business actors is known as product liability. Due to the

globalization of world trade and technological advances, developments have led to an online buying and selling system (e-commerce). E-commerce is not only trading carried out online, as understood by many people so far, but also includes every trading activity carried out or using other electronic media. Online transactions connect business actors, consumers, and other communities through electronic transactions to trade goods, services, and additional information. Under these circumstances, distance is no longer an impediment in the corporate world. The remarkable advancement of internet technology makes a product worldwide marketable on a website, allowing anyone from anywhere to directly access the site and conduct online transactions.

The uniqueness of the regulation regarding online transactions is that business actors and consumers do not deal directly and do not make agreements directly. This aspect is a weakness, especially when one party defaults and ignores consumer rights as stipulated in the UUPK. In responsibility based on default, the obligation to compensate for the loss caused by applying the agreement's clause is a mutually agreed-upon legal requirement. Thus, the payment of compensation and the amount of compensation are not determined by the law, but rather by the agreement between the parties. What is agreed upon is legally binding for those who create it. Contractual liability is the civil obligation of business actors (goods and services) for consumer losses based on an agreement. There is an agreement between the business actor and the consumer in the responsibility contract.

As is well known, Article 19 regulates the responsibility for compensation, Article 22 regarding the responsibility for proving the elements of guilt in criminal cases, and Article 23 UUPK regulates lawsuits through the Consumer Dispute Settlement Agency or the Judicial Body at the consumer's domicile, based on the provisions of Article 28 that the burden of proving the element of "mistake" in a claim for compensation for losses is the burden and responsibility of the business actor. This examines the legal consequences that business actors who can prove the loss is not their fault are free from liability for losses. Regarding responsibility in online transactions, corporate actors may still be held liable, particularly if the goods being transacted is substandard and causes harm to consumers. To anticipate a transaction error, business actors who offer things for sale to customers must supply complete, clear, and accurate information.

In general, the principles of responsibility in consumer protection law can be divided into:

a. The principle of responsibility based on fault

This principle is a reasonably general principle applicable in criminal and civil law. This principle is fully upheld in the Civil Code, especially Article 1365, Article 1366, and Article 1367. 23 This principle states that "a person can only be legally held accountable if there is an element of error he has committed". Article 1365 of the Civil Code, which is known as the unlawful act article, requires the fulfillment of 4 main elements, namely: 1) The existence of an unlawful act; 2) There is an element of error; 3) There is a loss suffered; 4) There is a causal relationship between errors and losses (Bachmid, 2021).

b. The presumption of liability principle

This principle explains that the defendant is always considered responsible until he can prove innocent. The burden of proof in this principle is on the defendant. This principle applies the reverse burden of proof. The premise of the theory of reversing the burden of proof is that a person is presumed innocent until the person concerned can prove otherwise. Suppose this theory is used in cases of consumer protection. In that case, the business actor being sued should prove guilt, and the defendant must present evidence that he is innocent. The consumer's position as a plaintiff is always open to being sued back by the business actor, if the consumer fails to point out the defendant's fault. A

person is considered guilty until the person concerned can prove otherwise, this is undoubtedly contrary to the legal principle of the presumption of innocence, which is commonly known in law, but if it is applied to consumer cases, it will appear that this principle is quite relevant because the person who should prove guilt lies with the perpetrator (Abdulgani, 2022).

c. The principle of absolute responsibility

This principle of responsibility is known as product liability. Product responsibility is the manufacturer's responsibility for products marketed to users, which cause and cause losses due to defects attached to the product. This idea of consumer protection law is typically used to ensnare commercial actors, particularly producers of harmful items, who sell such products. According to this theory, manufacturers are liable for any damages incurred by consumers as a result of their usage of a product on the market. Through this principle, every consumer who feels harmed as a result of defective or unsafe products can file a claim for compensation, regardless of whether or not the producer made an error (Cabral, 2020).

Therefore, the concept of legal protection for consumers encompasses two elements: preventive legal protection and coercive legal protection. According to Philipus M. Hadjon, preventative legal protection is a sort of legal protection in which the public may submit objections or opinions prior to a government decision taking administrative form. In other words, preventive legal protection is legal protection for the community that attempts to prevent the occurrence of difficulties or disagreements (Putra & Syafiq, 2022). Therefore, disputes in buying and selling transactions using electronic media require prevention to protect consumers. As a form of prevention so that no harm occurs to consumers, namely by fostering consumers, where the strategic role of the government is to carry out consumer protection as specified in Article 29 of the UUPK, intended to foster consumers in obtaining their rights. This needs to be done because consumer awareness of their rights is still very low due to Indonesia's generally lagging level of public education. Therefore, the government is working with the Non-Governmental Organization for Consumer Protection (LPKSM) to empower consumers through coaching and consumer education. Then there is repressive legal protection, namely legal efforts made to resolve problems between business actors and consumers, and litigation and non-litigation channels regulated in UUPK, UU ITE (Yuanitasari et al., 2020).

### **3. Principles of Consumer Legal Protection in Doing Business in Indonesia**

Pancasila is the source of the principle of legal protection in Indonesia, which recognizes and protects human dignity. According to the examined legislation, the principles for legal protection are preventative and punitive legal protection. Preventive legal protection seeks to avoid disputes, whereas repressive legal protection seeks to resolve them (Koto et al., 2022).

In buying and selling transactions through electronic media, unwanted circumstances result in a loss for the consumer. When experiencing a loss, the consumer has the right to get compensation. Regarding compensation, the provisions have been regulated in Article 4 letter h UUPK which states that consumers are entitled to compensation, payment/or replacement if the goods and services received are not following the agreement or not as they should be. Business actors must be responsible for consumer losses. Regarding the responsibility of business actors to harm consumers, the provisions are contained in Article 19 UUPK. Furthermore, in Article 23 UUPK, namely "Business actors who refuse and do not respond and do not fulfill compensation for consumer demands as referred to in Article 19 paragraph (1), paragraph (2), paragraph (3) and paragraph (4), can be sued through a consumer dispute resolution agency or submit to a court of law at the consumer's domicile".

In PP No. 82 of 2012 concerning the Implementation of Systems and Electronic Transactions regarding goods that are not following the agreement, the provisions contained in Article 49 paragraph (3), namely “Business actors are required to provide a deadline for consumers to return goods sent if they are not following the agreement or there are hidden defects” (Moin et al., 2019).

Then the principle regarding electronic proof when asking for compensation, for example, in court hearings, can be used as valid legal evidence. Provisions regarding electronic evidence are contained in the ITE Law in Article 5 paragraph (1): “Electronic information and electronic documents and printouts are valid legal evidence”.

Furthermore, regarding the legal principles of dispute resolution. The law has provided a forum for resolving electronic media buying and selling disputes. Provisions regarding e-commerce electronic transaction dispute resolution are contained in Article 18 paragraph (4) of the ITE Law, namely, “Parties have the authority to establish court forums, arbitrations, or other alternative dispute resolution institutions that are authorized to handle disputes that may arise from international electronic transactions they make” (Grimani et al., 2020).

Dispute resolution in electronic transactions can be resolved through litigation and non-litigation. The provisions for the settlement of litigation disputes are contained in Article 45 UUPK. Then it is emphasized again in Article 38 and Article 39 paragraph (1) of the ITE Law. Then the non-litigation dispute resolution provisions contained in Article 39 paragraph (2) of the ITE Law have several forms of dispute resolution: arbitration, negotiation, mediation, and conciliation.

The need for legal tools that can be applied, such as laws, new regulations, or legal rules tailored to the requirements of this medium. Without consumer protection and legal certainty, Indonesia will become a dumping ground for poor-quality products and services. What is more worrying is that it will be more challenging to achieve the people’s welfare as aspired (Turnbull et al., 2021). State protection for consumers in a weak position of negotiating seems to be an absolute necessity. In trade transactions on the internet, where the traffic between business actors and consumers is becoming closer and more open, state intervention, cooperation between countries, and international cooperation are urgently required to regulate the pattern of relationships between business actors, consumers, and a legal protection system for consumers (Arifin et al., 2021).

#### **D. CONCLUSION**

Technological developments have made it easier to make transactions online. However, in the process, many problems occur to the consumer. Therefore, the ITE Law is present in developing online business in Indonesia in a better direction. Legal protection for consumers in buying and selling transactions through electronic media is contained in Article 4 UUPK, which discusses consumer rights. Expressly, consumer legal protection in electronic trading transactions is contained in Article 65 of the Trade Law, then Article 28 paragraph (1) of the ITE Law. The act, as described in Article 28 paragraph (1) of the ITE Law, is punishable by imprisonment following the provisions contained in Article 45 paragraph (2) of the ITE Law.

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