
Legal Protection for Online Transaction Users: A Review of The Constitution No. 8 of 1999 Regarding Consumer Protection

Wahyuni Safitri¹(corresponding author), Wafda Vivid Izziyana²¹Universitas Widya Gama Mahakam Samarinda, Indonesia; wahyunibun@gmail.com²Faculty of Law, Universitas Muhammadiyah Ponorogo, Indonesia; wafda.vivid@yahoo.com

Submitted: December 16, 2019 - Revised: January 19, 2020 - Accepted: January 21, 2020 - Published: January 31, 2020

ABSTRACT

Legal protection for consumers in an electronic commerce transaction in Indonesia is crucial for the development of the society's economy. The aim of this research is to know how is the legal protection for online transaction users in Indonesia. The method of study is the juridicial-normative method. The data collection is done through literature study. The research results show that the legal protection in the Electronic Transaction Agreement in Indonesia is regulated in Articles 47 and 48 of the Governmental Decree, No. 82 of 2012 regarding the Establishment of the Electronic System and Transaction. Legal protection for the society is written in Article 46 of the Constitution No. 11 of 2008 regarding Electronic Information and Transaction and Article 62 of the Constitution No. 8 of 1999 regarding Consumer Protection. Legal protection towards consumers in electronic transaction in Indonesia is regulated strictly both in the aspects of criminal and civil laws.

Keywords: law; online transaction; consumer protection.

INTRODUCTION

Nowadays, the development of information and technology in Indonesia is going on rapidly. Technology is widely used in many layers of the society.⁽¹⁾ Significant development of information technology has influenced and changed the business methods which are at the moment managed and surveilled.⁽²⁾ Republic of Indonesia's 1945 Constitution Article 28F states that, "Every person has the right to communicate and to obtain information to develop themselves and to develop the surroundings, also the right to seek, to obtain, to receive, to keep, to manage, and to communicate information by using all available sources."⁽³⁾ This means that the state has the obligation to protect, to fulfil, and to respect the rights regarding information⁽⁴⁾. The state has the role in protecting the citizens from the negative influence of information technology, especially that regarding electronic transaction.⁽⁵⁾ The rapid development of technology brings sophistication in almost all aspects of the human life.⁽⁶⁾ One of the technological developments which is known widely by the society is the internet. It is a technology which brings ease of communication globally and it gives human beings the possibility to exchange information quickly. At first, internet was used as a medium of information exchange in the high education environment and in research institutions.⁽⁷⁾

There are two things which motivate the transactional activities in its relation to the technological development. First, is the increasing demand of those technological products. Second, is the ease in undergoing economic transactions.⁽⁸⁾ Apart from that, the development of the information and technology which is very rapid brings much change. The change of the people's pattern in life has happened in almost all fields, including the social, cultural, economic fields, and others.⁽⁹⁾ Such change happened due to the development of internet technology use, which is part of the information technology development. One of the huge changes due to information technology development happened in the field of economy.⁽¹⁰⁾

Information technology development has significantly changed the system of economy, from conventional to digital economy. This digital system allows businesses to undergo transaction through electronic media, which provides ease, speed, and efficiency. Nowadays, we can easily find commerce transactions through electronic transactions (e-commerce). It is a challenge of the era's development which needs serious attention so as to not cause problems due to the minimum preparation from the Indonesians in several aspects. Such aspects include the aspect of legal protection to prevent problems which may happen through the electronic commercial transactions. Because of that, it is not strange how not only developed countries, but also people in Indonesia use internet for e-commerce, e-business, etc, which develops rapidly. Right now, the world of the national banks has used these facilities to give ease of service in undergoing banking activities for their customers through e-banking or internet banking.

This also happens in Indonesia. The use of internet in Indonesia has actually started on 1993. It was at first only limited to entertainment. Yet, now internet is used for other things including for commerce. People also use social media to promote their products. The results are quite effective to increase the sales. The e-commerce

activity is not only in the form of e-commerce transactions in online shops. Yet, it also includes financial transaction in banks which uses internet as the medium.⁽¹¹⁾

In the complex change in the society and its various dimensions, the e-commerce activity brings implications in the legal aspect. This regards the authentication of legal subjects who undergoes transactions through the internet. The legal binding power, the offered transactional objects, the the exchange of right mechanism, the legal relations and the responsibilities of the parties who are involved in the transaction, the legality of the electronic note documents also e-signatures as evidences, the mechanism of dispute resolution, the legal choices and the court forums in authority in solving e-commerce disputes.⁽¹²⁾ These problems indirectly show that there is a shift form the conventional commerce model into the electronic commerce model. These problems arise as there is the basic problem, which is the validity of that system of transaction. Thus, how is the form of legal protection for online transaction users analysed from the Constitution No. 8 of 1999 regarding consumer protection.

METHODS

This research uses the juridical-normative method. Literature legal research is a legal research which analyzes literal sources or secondary data, which is then applied to the research problem, so that its presentation is based on principles, theories, doctrines, and constitutions which apply.⁽¹³⁾

RESULTS AND DISCUSSION

Transaction contracts are made based on the agreements which are written in an agreement or a contract through the electronic system.⁽¹⁴⁾ The validity of the transactional agreement, if it is based on the general civil law theories, is a legal action which involves two parties who have mutual needs in things which have certain economic value. It is usually realized through an agreement which is called a contract, as the contract has the function to protect a transaction.⁽¹⁵⁾

A contract of commerce is deemed as legally valid if it fulfills the requirements subjectively and objectively. If one requirement is not fulfilled, thus the commerce contract may be proposed for annulment (if the subjective requirement is not fulfilled) or it may be cancelled for the sake of law (if the objective requirement is not fulfilled).⁽¹⁶⁾ The four requirements which are needed so that an agreement is juridicially valid in Indonesia are as follows: there is an agreement between the related parties, there is the ability to undergo legal activities, there is an agreeable objective and there is the certain object . Provisions on the validity requirement of an agreement is written in Article 1320 of the Civil Law Code. The first two requirements are categorized as the subjective requirements. Meanwhile, the last two agreements are categorized as the objective agreement.

Implementation of the Civil Law Code's theorization and provisions may easily detect cases where the transactional agreement or contract requirements are not fulfilled in conventional transactions, as opposed to those in electronic contracts. This is because in the conventional transaction contract-making process, there is a chance that the parties related know each other. They face each other directly, or at least they know the competencies of each party. This is different from the electronic transaction contract-making process, where there is a huge chance that the parties do not meet eachother, and that the don't know one and another.

This causes difficulties in the detection of the legal protection, as the valid requirements of the contract are not fulfilled. Who can guarantee that in an electronic contract, the parties are legally competent to undergo a contract? Thus, how will it be if the contract made is legally annulled in the future as the sold objects are legal in the sending country, yet it is illegal in the destination country? Such things must be anticipated so that the parties related do not experience loss in the e-commerce transaction system. Basically, in line with the rapid development of the e-commerce transactions, the United Nations forms UNCITRAL (United Nations Commission on Internasioanal Trade Law), which is an institution which has the role in developin international trade laws as an effort in giving legal protection.

In 1996, there was a draft of a rather important legal regulation, which is the UNCITRAL Model Law on Electronic Commerce. To complete it, UNCITRAL also has an important reglation in the aspect of international law contract, especially that which uses electronic devices (e-contract) in a convention called the Convention on the Use of Electronic Communications in International Contracting. Its aim is to handle the problems which may arise due to the use of electronic communications in international contracts. It also has the aim to create a law certainty in the business world. The parties in the E-Commerce Transactions are the same as the commerce transactions in the real world, even though in the e-commerce transactions, the parties do not directly meet. Instead, they contact each other online.

In e-commerce transactions, the parties which related are: the seller who offers some products online as the business owner; the buyer or the customer, who accepts offers from the seller or the business owner, and who

wishes to undergo commercial transactions regarding the product offered by the seller.⁽¹⁷⁾ The banks have the role as a media which distributes the money in online commerce transactions. The buyer and the seller do not face each other directly, as they are placed in different locations. Thus, the payment is done through a medium, which is the bank.⁽¹⁸⁾ The provider provides the services.

The implementation of the online transactions via internet is done by the parties without facing each other directly. Thus, the online transactions between the parties are done through electronic devices also. It may be done through e-mails or other media. The online commercial transactions cannot be stopped. Every day, there are always new technologies in the internet. Meanwhile, the law protection and the law certainty for the internet users are not enough. Thus, there must be an effort to reach a balance of law in this condition.

The legal relations which happen in the online commercial transactions do not only happen between the business owners and the customers. Yet, they also involve other parties, which are:

1. interinstitutional transactions. In this case, both the buyer and the seller are regarded as institutions instead of individuals. Usually, this transaction is done because they know each other and the commercial transactions are done to make cooperative relation between those institutions;
2. commercial transactions between an individual and another individual who mutually sell items;
3. commercial transactions between an individual as the seller and an institution as buyer;
4. commercial transactions carried out between an individual and the government, for example tax collection.

The birth of the Constitution on Electronic Information and Transaction is a dilemma. There are still many weaknesses in giving e-commerce transaction's legal certainty. As the industrial and the technological development goes on rapidly, whether we want it or not, it will bring impacts to our country, especially in the aspect of electronic transactions.

With the increasing rate of electronic transactions, it pushes the need for legal provisions which regulate such activities, so that the related parties in the electronic transaction, especially the customers, obtain legal protection for all the electronic transactions they carry out.

Also, the electronic data or documents need certain legal power. Remembering that documents or pacts are only regarded as valid when written on paper (black on white). In this case, the legal provisions written in the Indonesian regulations may also be applied for electronic commercial transactions.

The four requirements of a valid agreement are the presence of agreement between those who bind themselves, the competence of the parties in creating agreements, a certain object (the object of the agreement must be clear and it must be able to be carried out), and a legal cause (it may not violate the law, the norms, and the public order). These requirements automatically apply in online commercial transaction agreements. This is strictly written in Article 47 of the Governmental Decree No. 82 of 2012 regarding the Establishment of the Electronic System and Transaction, in which it states that: (1) Electronic transactions may be done based on electronic contracts or other forms of contracts as a form of agreement between the related parties. (2) The electronic contracts are deemed as valid if: there are agreements between the parties, it is carried out by competent legal subjects, or those who have the authority to become the representative based on the constitutional regulations, there is a certain item. The object of transaction may not violate the constitutional regulations, the norms, or the public order.

Apart from that, an additional requirement in Article 28 of the Governmental Decree No. 82 of 2012 regarding the Establishment of the Electronic System and Transaction areas follows: (1) Electronic contracts or other forms of contract meant for Indonesian citizens must be written in Indonesian language. (2) Electronic contracts made with formal clauses must be according to provisions on formal clauses as regulated in the constitutional regulations.

CONCLUSION

In the implementation of the Constitution No. 8 of 1999 regarding Consumer Protection needs to have a periodical function of control and evaluation from the authorities and the society, mainly to give justice in disputes which arise due to defaults. Electronic Commerce Agreements have the principle of technology-neutral and freedom to choose technology. The principal of technology-neutral must be understood carefully. The parties who undergo online transactions should use electronic signatures which have legal power and a valid effect of law. The legal protection for customers in e-commerce transactions may be done through the proposal of default lawsuit, with the reason of the business owner's inability to carry out the responsibilities in the electronic contracts. The legal protection is based on Articles 38 and 39 of the Constitution No. 11 of 2008 regarding Electronic Information and Transaction and Article 23 of the Constitution No. 8 of 1999 regarding Consumer Protection. These regulations give a legal protection towards the people who experience loss in the e-commerce activity. The issuing of the Constitution on Electronic Information and Transaction on 2008 is a form of the seriousness of the Indonesian government to give a legal certainty to the people regarding the disputes

which happen through the information technology media, which is sourced from the achievement of the benefit and justice values. The society has not widely understood about this, thus there needs to be a socialization.

REFERENCES

1. Santoso T. Online Business Opportunities (Peluang Bisnis Online). Yogyakarta: Tugu Publisier; 2007.
2. Rajagukguk, Erman et al. Consumer Protection Law (Hukum Perlindungan Konsumen). Bandung: CV. Mandar; 2000.
3. Nasution A. Consumer Protection Law: An Introduction (Hukum Perlindungan Konsumen: Suatu Pengantar). Jakarta: Diadit Media; 2002.
4. Mantri BH. Legal protection for consumers in e-commerce transactions (Perlindungan hukum terhadap konsumen dalam transaksi e-commerce). Semarang: Universitas Diponegoro; 2007.
5. Asnawi HF. E-Commerce Business Transactions in Islamic Perspective (Transaksi Bisnis e-Commerce Perspektif Islam). Yogyakarta: Magistra Insania Press dan MSI UI; 2004
6. Sidabalok J, Pardosi HM. Consumer Protection Law in Indonesia (Hukum Perlindungan Konsumen di Indonesia). Medan: Bina Media; 2008.
7. Sjahputra I. Consumer Protection in Electronic Transactions (Perlindungan Konsumen dalam Transaksi Elektronik). Bandung: Alumni Bandung; 2010.
8. Abdul HB. Consumer Rights (Hak-Hak Konsumen). Bandung: Nusa Media; 2010.
9. Rizky K. Use of Clickbait Headlines on Muslim News and Lifestyle Sites (Penggunaan Clickbait Headline pada Situs Berita dan Gaya Hidup Muslim). Media Tor: Jurnal Komunikasi. 2018;11(1):31– 43.
10. Shidarta. Indonesian Consumer protection law (Hukum perlindungan Konsumen Indonesia). Jakarta: Gramedia Widiasarana Indonesia; 2006.
11. Zulham. Consumer Protection Law (Hukum Perlindungan Konsumen). Jakarta: Prenada Media Group; 2013.
12. Yusuf S. Consumer Dispute Settlement According to Law Number 8 of 1999 Concerning Consumer Protection (UUPK), Theory and Practice of Law Enforcement (Penyelesaian Sengketa Konsumen Menurut Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen (UUPK) Teori dan Praktek Penegakan Hukum). Bandung: PT. Citra Aditya Bakti; 2003.
13. Johnny I. Theory and Methodology of Normative Legal Research (Teori dan Metodologi Penelitian Hukum Normatif). Malang: Bayumedia Publishing; 2006.
14. Vince MR. Clickbait, Business Opportunities and Scientific Studies of Information Sharing Behavior in the Digital Age (Clickbait, Peluang Bisnis dan Kajian Ilmiah Perilaku Sharing Informasi di Era Digital). Jurnal Media Komunikasi Ilmiah. 2017;16(1) :102-110.
15. Niniek S. Cyberspace Problems & Anticipate Regulations (Cyberspace Problematika & Antisipasi Pengaturannya). Jakarta: Sinar Grafika; 2009.
16. Muchsin. Legal Protection and Certainty for Investors in Indonesia (Perlindungan dan Kepastian Hukum bagi Investor di Indonesia). Solo: Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret; 2003.
17. Barkatullah UAH. Urgency of Legal Protection Against Consumer Rights in E-Commerce Transactions (Urgensi Perlindungan Hukum Terhadap Hak-Hak Konsumen dalam Transaksi E-Commerce). Jurnal Cita Hukum. 2010;2(1):102-111.
18. Rifan AN, Jamaluddin M, Hardika FA. Legal Protection of Consumers in Online Transactions (Perlindungan Hukum Terhadap Konsumen Dalam Transaksi Online). Jurnal Serambi Hukum. Agustus 2014 –Januari 2015;8(2):91-100.