

# JURIDICAL ANALYSIS OF CONSUMER PROTECTION AGAINST FRAUD IN THE MARKETPLACE

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## **Abstract**

The rise of fraud cases in the marketplace shows that the position of consumers when transacting online is weak. However, this does not mean that sellers are free to sell their goods without complying with applicable regulations. The problem is this research is presented on how to protect consumers in the marketplace based on Law Number 11 of 2008 concerning Information and Electronic Transactions and how aspects of legal protection and accountability of business actors in the marketplace are presented. The method in this research uses normative legal research. This method is guided by the laws and regulations in Indonesia. This research find that the legal principle remains that every person who causes a loss to others must bear the responsibility for what he has done. So in this case the consumer can file a claim in the form of compensation to the business actor. The compensation according to Article 19 paragraph 2 of the Information and Electronic Transactions includes the return of a sum of money, the replacement of goods or services of an equivalent kind, health care, and the provision of compensation in accordance with the provisions of the legislation. When buying and selling online or online in the marketplace, business actors must understand and understand the rights and obligations of each party, be it the seller or the buyer. In addition, business actors must also understand the problem-solving mechanisms available in the electronic transaction management system or what is meant in this case is the marketplace.

*Maraknya kasus penipuan yang ada pada marketplace memperlihatkan bahwa kedudukan konsumen saat bertransaksi online sifatnya lemah, meskipun demikian bukan berarti penjual bebas menjual barang mereka tanpa mematuhi regulasi yang berlaku. Berdasarkan latar belakang*

*masalah dipaparkan rumusan masalah bagaimana perlindungan konsumen dalam marketplace berdasarkan Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik serta bagaimana aspek perlindungan hukum dan pertanggungjawaban pelaku usaha dalam marketplace. Metode penelitian dalam penelitian ini menggunakan jenis penelitian hukum normatif, yakni penelitian yang berpedoman pada peraturan perundangan di Indonesia. Dengan hasil penelitian bahwa tetap berlakunya prinsip hukum bahwa setiap orang yang melakukan suatu akibat kerugian bagi orang lain, harus memikul tanggung jawab yang diperbuatnya. Maka dalam hal ini konsumen dapat mengajukan tuntutan berupa kompensasi/ ganti rugi kepada pelaku usaha. Kompensasi tersebut menurut Pasal 19 ayat 2 UUPK meliputi pengembalian sejumlah uang, penggantian barang atau jasa sejenis yang setara, perawatan kesehatan, dan pemberian santunan sesuai ketentuan perundang-undangan. Maka bisa disimpulkan pelaku usaha saat berjual beli secara daring atau online di marketplace harus mengerti dan paham mengenai hak dan juga kewajiban tiap pihak baik itu penjual ataupun pembeli, sekaligus paham terkait mekanisme penyelesaian masalah yang tersedia pada sistem penyelenggara transaksi elektronik atau yang dimaksudkan dalam hal ini ialah marketplace.*

**Keywords:** Marketplace, Consumer protection, Legal Liability.

## INTRODUCTION

At present, almost all types of products can be traded using the Internet. This makes any party who wants to sell their products can take advantage of sales services or services, for example shopee, tokopedia or the like. Physically, this is the same as the mall. Apart from selling or advertising services, there are other ways of trading via the internet, namely by using social media such as Twitter, WhatsApp or other social media applications. With the internet media, it makes all costs free for sellers and is expected to expand the sales area. Meanwhile, in the system or method of trading via the

internet, shipping costs will be added automatically. So, you could say buying and selling activities in this way or better known as e-commerce provide open opportunities for other businesses besides trade, namely delivery services, for example, the Post Office, which has started to move more actively again.

With the rapid development of the marketplace in a generally short period of time, the shopping pattern with the marketplace has become a new lifestyle and continues to evolve following technological developments. Although from a business perspective, it will benefit consumers, producers and the marketplace itself, but from a legal point of view, there will be many consequences that arise because there are no regulations that specifically regulate this marketplace. A number of problems that often arise are related to the weak position of consumers, such as the goods obtained are not in accordance with the request or the goods have arrived but exceed the time limit that has been informed and determined by the marketplace. Likewise, it is conceivable that the merchandise that is exchanged is not a genuine item but a counterfeit item, but the data displayed to the buyer is 100% genuine or original (Wariati & Susanti, 2014).

This usually happens to buyers. However, not many cases have been raised due to customer ignorance about the mechanism for complaints and consumer dispute resolution in electronic trading transactions through this marketplace. Indonesia's population continues to grow. The high consumptive lifestyle and the almost evenly distributed use of the internet are favorable factors for the opening of new business opportunities. Furthermore, business people read these opportunities by turning conventional businesses into online businesses. In addition to the inevitable

internet-based business potential, there are also a number of marketplaces that are developing in the country, including Tokobagus which has developed into MatahariMall, Lazada, Zalora, shopee, tokopedia and OLX.

Manufacturers take advantage of the desire of buyers who need convenience in finding their needs by utilizing visual and data innovation enhancements and making items more attractive. For consumers, time is very minimal to do shopping activities due to busy work, due to traffic jams, which makes web-based shopping the main choice. Generally, some people with this ability mostly have a minimal level of knowledge, but if they are not careful and careful, they will still become objects of exploitation. When the transaction occurs and if the goods have been received then the goods do not match the specifications, then the consumer cannot claim it.

In the explanation of Law Number 8 of 1999 concerning Consumer Protection (Consumer Protection Law), what is meant by the element that often occurs in the exploitation of e-commerce consumers is the lack of consumer knowledge of legal awareness of consumer rights. The next element is the public perception that legal affairs will greatly complicate matters. Further, there is no guarantee that the buyer's problem will be properly resolved. Consumers also find it difficult to contact parties who can help with their rights as consumers. Apart from that, the costs are not small when contacting consumer protection agencies. Standard agreements that are ready to be signed on e-commerce are made by business actors with standard provisions that are not informative and non-negotiable. This is what makes e-commerce transactions like a road in place (Mansyur, 2007).

One of the advantages of a marketplace is that it has a total security framework and a better internet trading office compared to exchanges outside the marketplace. Despite having high security, the marketplace still has the potential to harm consumers because of a weakness in the marketplace. These shortcomings include, among others, various counterfeits that should be carried out by traders in the marketplace. one form of counterfeiting is to sell products that do not match the images displayed on their web-based store. Vendors take advantage of flaws in the marketplace so they can scam their buyers.

Even though it makes it easier for consumers, online buying and selling transactions use the marketplace. However, many people feel disadvantaged by this online buying and selling service, according to a number of factors that cause disputes during the electronic transaction process, which are as follows:

- a. Inappropriate quality of goods;
- b. Asymetrix information;
- c. Items not as ordered;
- d. Fraud risk.

Quoted from the news contained in Kompas TV Independent, the police arrested a suspected fraudulent shop in an online network on a marketplace whose mode was selling cellphones. The value of the loss is in the hundreds of millions of rupiah. The Directorate of Criminal Investigation at the Banten Police revealed that there had been a case of buying and selling fraud using an electronic system. The police have carried out the process of arresting 4 perpetrators at different places. The case was

revealed after there was a fictitious order suspected by the e-commerce party and immediately reported to the police (Ancely, 2021).

To carry out the action, each of these actors stated that they had 24 active accounts to carry out the action. Meanwhile, the police have obtained a number of evidences from the perpetrators, including various passbooks, printers, 3 laptops, dozens of cellphones and various types of fake packages that are ready to be sent. The perpetrators' mode is using an online shop account by making sales and purchases, but they themselves sell and buy them. Meanwhile, the contents of the fake packages they have prepared are fictitious but packaged as well as possible to make them look genuine. So that for their actions, the perpetrators get cashback profits in the form of points from e-commerce and can later be exchanged for money or other goods.

The importance of legal issues in the field of E-commerce aims to provide protection and settlement of disputes in sale and purchase agreements for parties who use electronic media as transaction media. Regulations, both at a lower level and more specifically, aim to empower local areas and legal authorities to implement them reliably and without distinguishing one region from another. Regulations regarding e-commerce transactions are contained in Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Information and Electronic Transactions (ITE Law) and Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions in addition to using the Consumer Protection Act.

As a result, the existence of the marketplace does not work as expected. This is because there are still problems related to the misfortune experienced by customers where this ignores the buyer's right to correct, clear, and honest data regarding the condition and guarantee of goods and/or services and the right to receive compensation, compensation, and/or replacement. If the merchandise or potential profits obtained are not in accordance with the agreement or not as they should be. To provide strong certainty in the implementation of web-based commerce, the Consumer Protection Act is expected to become a legal umbrella based on the idea that the economic progress of society in the era of globalization produces a variety of goods and/or services that contain technological content that can improve the welfare of the community at large. This is also to obtain certainty of goods and/or services obtained from trade without causing consumer losses. Due to the increasing opening of the people's market due to the flow of monetary globalization, it is important to continue to guarantee the expansion of government individual assistance and guarantee the quality, quantity, and security of the goods and/or services obtained in the market.

The rise of fraud cases in the marketplace shows that the position of consumers when transacting online is weak. However, this does not mean that sellers are free to sell their goods without complying with applicable regulations. The right as a consumer is to obtain product-related information in the form of a clear image of the product. Merchants in the marketplace must also know how they are responsible for conducting electronic transactions in the marketplace so as not to cause harm to consumers. Based on the description above, the authors are interested in reviewing and

exploring issues related to "Juridical Analysis of Consumer Protection Against Fraud in the Marketplace".

## **METHODOLOGY**

Research on Juridical Analysis of Consumer Protection Against Buying and Selling Fraud in the Marketplace is a type of normative legal research. This research is guided by the laws and regulations in Indonesia. This research can also be called as library research. In this research, the legal material used is the collection of a literature study. Then an in-depth analysis is carried out in order to be able to answer a number of problem formulations taken in this study. The analysis process in this study uses descriptive analysis which is used as the object of this study so that the conditions are also clear. This analysis also includes one of the efforts to solve the problems encountered, also determine the relationship between the problems that have been encountered in order to understand how to solve them.

## **DISCUSSION**

### **Consumer Protection in the Marketplace Based on Information and Electronic Transactions Law**

Realizing that there are a number of weaknesses in the Consumer Protection Law, the Government together with the DPR issued a regulation in the form of Law 11 of 2008 or the Electronic Information and Transaction Law. A number of articles in the Act apply to cover the weakness of the Consumer Protection Act in terms of protection of consumer rights.



In Article 9 of the Electronic Information and Transactions Law which explains that "Business actors who offer products through electronic systems must provide complete and correct information related to contract terms, manufacturers, and products offered". Then Article 10 states the requirements for reliability certification for business actors as well as Articles 2 and 18 which provide solutions to the problem of choice of law and choice of forum to adjudicate if electronic transactions involve parties domiciled in other countries.

Consumer protection law is one part of consumer law. Consumer protection law includes principles and rules to regulate and ensure the interests of buyers. So that the buyer does not bear the loss due to the activities of the seller who is not responsible for the product. Consumer protection is an issue related to human interests in terms of buying and selling. So that this is the hope of all countries, especially the Republic of Indonesia, to be able to realize legal protection and legal certainty. This is so that consumers who feel aggrieved can have their rights fulfilled (Utomo et al., 2020).

In addition to improvements, several things that must be paid attention to are contracts/agreements that occur in electronic transaction activities using online shopping web pages in the marketplace. In Indonesia, until now there is a special law which contains regulations related to this matter, namely Law Number 11 of 2008 or the Law on Information and Electronic Transactions.

As an electronic transaction actor, the marketplace is subject to the applicable legal regulations in Law Number 11 of 2008 concerning

Information and Electronic Transactions. There are several rules, such as in article 17 of the Electronic Information and Transactions Law, which states that "Parties conducting electronic transactions must have good faith in interacting and/or exchanging electronic information and/or electronic documents during the transaction."

Abuse of online buying and selling transactions with fraudulent modes is increasing. Meanwhile, the form of solving these problems, if studied using the ITE Law which is a *lex specialist*, is not enough to overcome the consumer losses above. This identifies a crisis in the realm of legal certainty in the cyber world. So that it feels like chaos theory is going on or there is disorder.

Consumer losses, which are experienced in the form of fraud in electronic transactions, have the same legal protection as the law applicable in conventional buying and selling transactions. The difference is the use of internet facilities in electronic transactions which makes it difficult to carry out executions and real actions in the event of a criminal act of fraud. The nature of cyber in electronic transactions allows every business actor to disguise or fake his identity in every transaction.

If the business actor uses a false identity or commits a ruse in the electronic transaction, the business actor can also be punished based on Article 378 of the Criminal Code regarding Fraud as well as Article 28 paragraph (1) of the Electronic Information and Transaction Law regarding issues of issuing false and misleading words that result in consumer losses in electronic transactions.

Based on the provisions of Article 29 of the Consumer Protection Law, the main factor that becomes a weakness of consumers is the level of understanding and awareness of their rights which is still low. Article 29 of the Consumer Protection Law states that public authorities are responsible for encouraging the implementation of consumer protection to involve buyers in obtaining their rights. Reinforcement of buyers, in accordance with the standards of equality and balance, should not harm the interests of business people. However, through buyer's insurance, it can be relied on to empower a solid business environment and introduce a solid organization in the face of competition through setting the value of merchandise and additional benefits. Efforts to foster consumer protection organized by the government as mandated by the law are an effort to ensure that the rights of consumers and business actors are obtained as well as the implementation of their respective obligations according to the principle of justice (Winarsih & Oktaviarni, 2021).

Meanwhile, Article 45 paragraph 1 of the Consumer Protection Law explains that: "Every consumer who is harmed can sue business actors through institutions tasked with resolving disputes between consumers and business actors or through courts within the general court environment". With the recognition of electronic evidence as legal evidence in court as stated in Article 5 paragraphs 1, 2, and 3 of the Electronic Information and Transactions Law, the evidence that can be used by consumers in court is as follows:

- a. Account and telephone number, addresses and names of business actors;

- b. Email or SMS as proof of agreement to carry out buying and selling transactions;
- c. Proof of payment or proof of transfer

With the enactment of the legal principle that every person who causes a loss to another person, that person must bear the responsibility for what he has done. So, in this case, the consumer can file a claim in the form of compensation/compensation to the business actor. The compensation according to Article 19 paragraph 2 of the Consumer Protection Law includes the return of a sum of money, replacement of goods or services of an equivalent kind, health care, and the provision of compensation in accordance with statutory provisions.

### **Aspects of Legal Protection and Accountability of Business Actors in the Marketplace**

The commitment contained in the Consumer Protection Act will limit every business actor from providing valid data on merchandise. This serves to fulfill customer rights which include the validity of the product, brand, shape, weight, condition, and price of an item experienced by consumers for goods received that are not in accordance with the order. Every prospective seller who accesses the marketplace site will be given directions to make it easier for prospective buyers to make online buying and selling transactions through the marketplace.

In principle, the marketplace is a web-based market. The market is a place for consumers and business actors to make buying and selling transactions related to services or goods electronically or non-cash. The

marketplace has legitimate reasons for standard exchanges so it is important to concentrate on the arrangements contained in common exchanges. As an illustration, this is regulated in Article 1457 to Article 1540 of the Civil Code. (Tutik, 2008)

Based on Article 1457 of the Civil Code, buying and selling is an agreement in which one party binds himself to deliver an object and the other party pays the promised price. Furthermore, Article 1458 of the Civil Code states that the sale and purchase is considered to occur between the two parties after the people reach an agreement on the object and its price. Although the material has not been submitted and has not been paid for. That way, the legal relationship that occurs in electronic trading transactions is a civil law relationship, so the rules applied also use civil rules.

Consumer protection is not only a preventive measure, but can also be used as a serious measure in various fields related to customer assurance. The right of consumers to this information is very important because these rights are useful so that consumers get a picture of a product they want. So that buyers can buy goods as needed and prevent losses due to incorrect data. This is considered important for buyers before they use their money to buy the merchandise.

Consumer protection includes two perspectives, namely insurance of goods obtained that are not in accordance with the understanding and security against conditions that are detrimental to consumers. Business actors who send goods that do not match the picture can be considered to have committed an act of default. This is because business actors do not fulfill their commitments in electronic agreements, thereby harming buyers.

The type of default that is carried out is when the debtor fulfills the performance, but not as it should. This means that business actors send goods that do not match the picture as expected or desired by consumers. (Naimah and Soesilo, 2021)

The relationship between consumers and business actors is a continuous and continuous relationship. This relationship arises on the grounds that the two really need each other and have a high sense of dependence. Consumers and business actors have a mutually dependent relationship, without consumers, business actors cannot guarantee their business continuity. On the other hand, without production from business actors, consumers cannot fulfill their needs.

Safety for buyers is an advantage for local buyers. Laws and guidelines made by public authorities will provide legal certainty through legal protection. So that the freedom and interests that have been controlled will be guaranteed. Efforts to provide insurance are also carried out to broaden the peace of buyers. So that in the end you will really want to understand the balance of interest guarantees between buyers and business actors.

Article 65 Paragraph (1) of Law Number 7 of 2014 concerning Trade explains that every business actor who exchanges merchandise and additional profits using an electronic framework is obliged to provide complete and correct information or data. In addition, Article 65 Paragraph (2) of Law Number 7 of 2014 concerning Trade explains that business actors are prohibited from exchanging merchandise and additional profits that are not in accordance with the information or data provided. One of the information or data depends on Article 65 Paragraph (4) letter b of Law

Number 7 of 2014 concerning Trade, in particular the special needs of advertised products. If the business actor who exchanges merchandise electronically does not provide complete and clear data, then at that time as referred to in Article 65 Paragraph (6) of the Trade Law, the business actor may be subject to administrative sanctions in the form of license revocation.

Article 48 Paragraphs (1) and (2) Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions states that business actors who offer goods through the Electronic System must provide complete and correct data related to contract requirements, manufacturers, and advertised items. (VerrenAndreas, 2020: 906). Then, at that time, business actors are required to provide clear data about the offer of an agreement or advertisement. Article 50 letter a Government Regulation Number 71 of 2019 concerning the Operation of Electronic Systems and Transactions explains that associations in the operation of electronic exchanges must provide correct information and data. In addition, Article 50 letter a of Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions explains that parties in carrying out activities in the electronic market must provide the authority to settle complaints. So that if customers feel hampered in conducting exchange transactions in the marketplace, they can file an objection to the administration of complaints given by the marketplace.

Consumers who feel aggrieved can sue business actors through a dispute settlement agency or through general courts (litigation) as explained in Article 45 Paragraph (1) of Law Number 8 of 1999 concerning Consumer

Protection. Consumers can also resolve their problems through non-litigation channels in accordance with Article 45 Paragraph (2) of Law Number 8 of 1999 concerning Consumer Protection. The agency that can resolve consumer disputes is the Consumer Dispute Settlement Agency (BPSK). While examples of Non-Governmental Consumer Protection Institutions are the Indonesian Consumers Foundation (YLKI), the Indonesian Archipelago Consumer Protection Agency (LPKNI), and the Non-Governmental Consumer Protection Agency (LPKSM). Thus, consumers can also resolve disputes over goods that do not match the image in a civil or criminal manner. So that consumers have clear legal protection.

Based on the various rules described above, it shows that consumers or buyers have various legal protections or guarantees regarding product mismatches when transacting in the marketplace. These various rules are useful to prevent buyers from having information defects so that later they have the potential to cause losses to buyers. Thus, consumers who are harmed, due to the goods received do not match the picture in the transaction in the marketplace, can use the various legal grounds above as a form of legal protection.

The agreement when buying and selling online is considered valid as an electronic acknowledgment in accordance with special instruments and the substance of the agreement in the electronic agreement. However, if there is a discrepancy between the electronic acceptance and the electronic offer, then an agreement has not been reached based on the explanation of Article 44 paragraphs (1) and (2) of PP Number 71 of 2019 regarding Sales and Purchases Conducted Electronically. The event of an internet-based sale



and purchase deal in a commercial center starts when the buyer selects the agree button when he wants to buy something. However, the fairness of merchandise can be known when the goods purchased have been received by consumers. So that an agreement is reached when the consumer receives the goods as promised and the seller fulfills his promise.

Basically, there are two compensation mechanisms in online fraud cases, namely by returning funds without an obligation to return goods and refunds accompanied by an obligation to return goods. This is also stated in the consumer protection law in Indonesia which states that it is legal and valid as long as it is in accordance with the existing laws and regulations. (Adis Nur Hayati & Antonio Rajoli Ginting, 2021)

So, it can be concluded that online business actors in the marketplace must understand and understand the rights and obligations of each party, be it the seller or the buyer. In addition, online business actors must also understand the problem-solving mechanisms available in the marketplace system. Furthermore, if the business actor delivers goods that are appropriate or not the same as promised to the consumer, the business actor must compensate so that the rights of the buyer or consumer are not violated as well as a form of good faith from the business actor when buying and selling, namely by fulfilling the legal responsibilities required by the business actor.

## **CONCLUSION**

With the enactment of the legal principle that every person who causes a loss to another person, that person must bear the responsibility for

what he has done. So, in this case the consumer can file a claim in the form of compensation/compensation to the business actor. The compensation according to Article 19 paragraph 2 of the Consumer Protection Law includes the return of a sum of money, replacement of goods or services of an equivalent kind, health care, and the provision of compensation in accordance with statutory provisions.

So, it can be concluded that business actors in the marketplace must understand and understand the rights and obligations of each party, be it the seller or the buyer. Business actors must also understand the problem-solving mechanisms available in the marketplace system. Furthermore, if the business actor delivers goods that are not as promised to the consumer, the business actor must compensate so that the rights of the buyer or consumer are not violated. This is also the good faith of business actors when buying and selling, namely by fulfilling their legal responsibilities. [W]

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