

The Legal Effort of E-Commerce Fraud's Victim According to The Indonesian Consumer Protection Law

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ABSTRACT

The study aim to identify explain the legal efforts that can be taken by the victim of E-Commerce fraud. This research is descriptive normative legal research, which use secondary data (literature) in the form of primary and secondary legal materials. The approach taken is the Legislative Approach and the Legal Concept Analysis Approach. The results of the research show that the legal effort can be taken by victims of E-Commerce fraud, victims can make efforts outside the court, namely, complaints to the Indonesian Consumers Institutions or sues the merchant through courts within the general court environment. Settlement of disputes outside the court doesn't eliminate criminal responsibility as regulated in Law. If an out of court settlement effort has been chose, a lawsuit through the Court can only pursued if the effort is declared unsuccessful by one of disputing parties.

Keywords: *Legal Effort, E-Commerce, Victims, Consumer, Law.*

1. INTRODUCTION

Intelligence is produced and implanted into a machine (computer) so that it can perform human-like tasks [1]. Artificial Intelligence can do tasks faster [2] and has a significant impact on Indonesian economic development, including the Digital Economy. The Industrial Age 4.0 is ushering in a new era of automation, in which computers and machines are compatible with artificial intelligence and can understand and control problems with little or no human intervention [3].

The Digital Economy is a type of economy based on improvements in information technology and allows distance and location to be transcended. Online/internet-based marketing and development, website and smartphone-based applications, digital games or games, digital education, e-commerce, marketplaces, financial technology (fintech), and many other enterprises are examples of firms in the digital economy. Digital marketing is a promotional activity and market search conducted online through digital media, such as social media [4].

E-commerce is the act of doing business transactions through the internet as the primary means of communication [5]. In the implementation of E-Commerce, anomalies and fraud are common. In 2019, according to the Directorate of Cyber Crime, Bareskrim recorded 1,617 online fraud incidents There were 534 cases on Instagram, 413 cases on Whatsapp, and 304 cases on Facebook. Fraudsters frequently employ this strategy to carry out their schemes. Specifically, via enticing offers on behalf of a reputable platform. These offers are usually distributed via a short message service (SMS) with a link [6]. A Yogyakarta student was reportedly a victim of an online scam. Someone claiming to sell a laptop allegedly duped the victim, according to the victim. The crime started when he was searching products on the internet and came across the suspect's contact information, which was followed by exchanging contacts and negotiating. After sending the funds, it was discovered that the laptop ordered online had not arrived. The suspect claimed that he had sent the laptop and that the delivery provider had a problem. Polda Metro Jaya had discovered fraud incidences with online sales on multiple websites a month before. The suspect pretend to

sell a variety items on the internet, ranging from electronics, accessories to motorized vehicles [7]. Redy Leoagni Nantama (26), a resident of Candimas street 1 Kalipancur, Semarang, Central Java, filed a complaint with the police after falling victim to a scam while purchasing an iPhone 6 cell phone on the internet. He was sent a lipstick toy instead of the phone. Danis' wish for an iPhone 6+ was dashed when the Apple product he ordered on the Lazada shopping site turned out to be a bar of soap [8].

E-commerce is a sale-purchase agreement model that differs from traditional buying and selling transaction models in terms of characteristics and accentuations, especially with a reach that is not only local but also global. relevant and accommodating to the nature of e-commerce, or require significant e-commerce regulations [9].

Consumers take advantage of e-commerce since they do not have to leave their homes to shop, and the variety of goods/services is likewise diverse, with generally higher pricing. There are positive and negative aspects to anything. It is considered favorable since these conditions can help consumers by allowing them to freely chose the goods and services they want. Consumers can choose the type and quality of goods and services that best suit their needs. On the other hand, it can be seen as negative because it puts the consumer in a weaker position than business actors, which can lead to disappointment and losses [4]. The public/consumers may feel benefited or disadvantaged as a result of its development. It is profitable if these products are delivered in accordance with consumer demand. Consumers are disadvantaged when products purchased have faults, are not as expected, or even when consumers are tricked and the goods ordered don't arrive at all. The main factor that causes consumers to become susceptible is their lack of legal knowledge and awareness of their rights [10]. This circumstance is exploited by business actors to increase profits while ignoring the obligations that should be imposed on them. Consumers should have full protection rights, and it is obvious that all attempts to create legal certainty to protect consumers are regulated under Law No. 8 of 1999 concerning Consumer Protection. The significance of conducting this research is to learn more about what legal effort can be taken by E-Commerce fraud's victim according to the Indonesian Consumer Protection Law?.

2. METHOD

This's descriptive normative legal research study that analyzes positive legal norms as the focus of study. This is also known as dogmatic legal research, is concerned with the analysis, maintenance, and

development of positive legal frameworks based on logical principles [11]. Secondary data (library) is used in the form of primary. The Legislative Approach and Legal Concept Analysis Approach were used in this case to analyze Law No. 8 of 1999 concerning Consumer Protection. The purpose of this study is to find out what legal efforts can be taken by E-Commerce fraud victims according to the Indonesian Consumer Protection Law.

3. BASIC THEORY

3.1. Legal Protection Theory

The Law is the preferred method of governing the law, and the Indonesian legislation generally guarantees order, justice, and legal certainty, as well as legal protection in society. According to Satijipto Raharjo, Legal protection protects Human Rights that have been violated by others, and it's provided to the public so that they can enjoy all the Rights granted by Law. Law can provide protection that's not only adaptable and flexible but also anticipatory and proactive. [12] Law is required for anyone who is socially, economically, and politically weak to gain social justice. As a result, the theory of legal protection is applied as an analytical tool in this study, which is one of the most important theories to be studied, because the focus of this theoretical study is on legal protection offered to anyone who is in a weak position, both economically and legally. [12] Related to consumers who are victims of E-Commerce fraud, Law Number 8 of 1999 regarding about Consumer Protection is one of the legal effort that can protect consumers.

3.2. Legal Certainty Theory

Legal Certainty Theory from Hans Kelsen. According to Kelsen, the law is a system of norms. Norms are statements that include some guidelines on what to do and emphasize the "should" or *das sollen* elements. Norms are the result of deliberate human behavior. [13] laws containing general rules to guide individual's behavior in society, both in their interactions with other people and in their interactions with society. The regulations significantly depend on society's ability to burden or punish individuals. The existence and the implementation of these rules create legal certainty. [14] With Law no. 8 of 1999 concerning Consumer Protection, this is one of the efforts to ensure legal certainty in consumer protection

4. FINDINGS AND DISCUSSION

E-commerce has changed the development, marketing, sales, ordering, delivery, service, and payment paradigms, among others. The way products and services are promoted is changing from offline to online and more

interactive. The availability of online electronic transactions via the internet gives rise to virtual global business communication. [5]

Technological advancements continue to accelerate, particularly in Indonesia. The rise of smartphone users and digital activity nowadays demonstrates this. According to the findings of a Statista survey, Indonesia is one of the most sought-after countries for e-commerce, with around 20 million individuals shopping online through e-commerce platforms in 2017. By 2022, this number is expected to rise to 65 million users. Unfortunately, some people are now using developments in technology and internet activity to commit cybercrime. Fraud on e-Commerce sites is on the rise, and it may cost you a lot of money. [15] Fraud is a dishonest act done to harm another person, and it is frequently done to achieve various benefits, most of which are financial. In theory, online fraud is the same as traditional fraud; the only difference is the method of perpetration [16]. Several types of fraud are now often used in E-commerce transactions, including Consumers are defrauded by sellers who give the seller's account number together with the amount of money that needs to be transferred. [17] Fraud on Items received that aren't in accordance with the Order/Agreement between Seller and Consumer. Pretending to sell goods, discount prices on Online Shopping Day, and other types of fraud [18] In this case, It is impossible to communicate between customers and business actors. [19] Consumers in Indonesia are most susceptible to fraud with goods that are not delivered according to orders and discount price fraud.

Consumers who are frequently victims and suffer significantly require efforts to ensure that their rights are enforced and protected. The Law No. 8 of 1999 regarding Consumer Protection is a responsive way that it designed to protect consumers from excesses resulting from economic and technological developments, as well as the impact of global changes that can accelerate business activities. [20] Legal protection, according to Satijipto Raharjo, protects human rights so that they can use all legal rights. Legal protection gives an overview of how legal functions work together to accomplish legal purposes such as justice, expediency, and legal certainty. The rights of e-commerce victims will be preserved by providing legal protection to them. Protection that is both preventative and repressive.

Based on Article 1 point 1 of Law no. 8 of 1999 "Consumer protection is all efforts that guarantee legal certainty to protect consumers", [21] guarantee effort Legal certainty for consumers is intended so that all activities can run specifically to protect the safety and comfort of consumers from arbitrary actions by business actors that result in the loss of Consumers' Rights. [22]

Article 4, Law Number 8 of 1999 regarding about Consumer Protection, regulates: [23]

Right to comfort, security, and safety in consuming goods and / or services;

Right to choose goods and / or services and to obtain such goods and / or services following the exchange rate and the promised conditions and guarantees;

Right to correct, clear and honest information regarding the conditions and guarantees of goods and / or services;

Right to have their opinions and complaints heard on the goods and/or services used;

Right to obtain proper advocacy, protection, and efforts to resolve consumer protection disputes;

Right to obtain compensation, and / or reimbursement, if the goods and/or services received are not following the agreement or not properly; and so on.

Based on the provisions above, Consumers who are victims of fraudulent goods received are clearly not according to orders, and discount price fraud or other e-commerce fraud is a form of violation of consumer rights; consumers have Right to choose the good and / or service in accordance by exchange rate, promised conditions and guarantees, as well as the Right to get the correct, clear, and honest information. Related to this, if this Law has regulated consumer rights in online transactions (E-commerce), then consumers can take legal action in the form of criminal charges or compensation. However, this law only regulates consumer protection in offline form. Therefore, it is recommended that this law be revised so that it can accommodate consumer protection in online transactions.

More explicitly, Article 8 paragraph (1) letter f of Law Number 8 of 1999 forbids business actors from creating and / or trading goods and / or service that fail to live up to the promises made on labels, packaging, information, ads, or other means of promoting the sale of such goods and/or services. A violation/prohibition for business actors in the trade of goods is a mismatch between the specifications of the products received and the goods mentioned in advertisement / photo of the offering goods. if the seller violates the restriction against trading good and / or service that don't live up to claims made on label, etiquette, description, advertisement, or promotion of the sale of the goods and / or service, Article 9 Paragraph (1) letter a Law Number 8 of 1999 states "Business actors are prohibited from offering, promoting, advertising goods and/or services incorrectly, and/or as if the goods have met and/or have discounted prices, special prices, quality standards certain style or fashion, certain

characteristics, history of use.” In line with that, Article 10 letter d also stipulates that business actors who supply products and/or services for trading are forbidden from offering, promoting, advertising, or making false or misleading representations about the offer of discounts or enticing prizes, then he can be sentenced based on Article 62 paragraph (1) of Law 8/1999 which reads: "Business actors who violate the provisions as referred to in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letter a, letter b, letter c, letter e, paragraph (2) and Article 18 shall be sentenced to a maximum imprisonment of 5 years or a maximum fine of Rp. 2 billion." [21]

Consumers who are defrauded or become victims in an e-commerce transaction have the right to get refund, compensation, and/or replacement of the products and/or services received if the agreement is not fulfilled or the transaction is not completed properly. and. business actors must offer refund, compensation, and / or replacement if the good and / or service received or used don't meet Agreement's requirements. Settlement of consumer disputes in online / e-commerce transactions using the provisions of Law Number 8 of 1999, Article 23 of Law Number 8 of 1999 states that Consumers have Right to sue the seller and have dispute resolved through Consumer Dispute Settlement Agency or bringing a Lawsuit to Consumer's domicile Court if Seller refuse and / or even don't respond it and /or don't reach the compensation on Consumer demand. This accordance to Article 45 paragraph 1 of the Consumer Protection Law which states "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". Proper dispute resolution is everyone's hope, including between business actors and consumers. [24]

Based on these provisions, Consumers are guaranteed by law to be able to defend their Rights against the Business Actors under these laws, they also have the option of determining the type of dispute resolution as stipulated in Law Number 8 of 1999, article 45 Paragraph 2 "Consumer disputes can be resolved in court or out of court, depending on the disputing parties' personal choice." [25] According to Hans Kelsen's perspective, law is a norms system. Norms are statements that include certain guidelines regarding what should be done and emphasize the "should" or *das sollen* component. The creation of norms is the result of deliberate human action. Every e-commerce victim will be guided by the law, which contains general rules, in order to obtain legal certainty.

According to the rules of Law No. 8 of 1999, there are two alternatives for settling consumer disputes:

Dispute resolution through the general judiciary's courts. There are several approaches that can be used in court to settle consumer disputes, such as: (1) Ordinary/conventional civil lawsuits; (2) Class action or class-action civil lawsuits; a lawsuit for a business actor's infringement can be brought by a group of consumers with a common interest. A class action must be brought in this matter by a group of consumers who have been affected and may be proven legally. (3) Legal standing, is a formal process proposed by an entity, in this case the Non-Governmental Consumer Protection Agency that known as (LPKSM). LPKSM is a non-governmental organization that has been approved by the government to carry out consumer protection activities. [24]

Out-of-court resolution of disputes: Law No. 8 of 1999 gives an authority to the consumer dispute settlement agency/BPSK to resolve consumer dispute outside of court by: (1) Conciliation is initiated by one or more parties, with the BPSK Assembly acting as a passive conciliator. The BPSK assembly acts as a go-between for the opposing parties. A conciliator will clarify problems and bring the parties together in conciliation, but will be less active than a mediator in presenting possibilities for settling a dispute. (2) Mediation is taken at the initiative of one party or both of them. In mediation, the BPSK Assembly is active as an intermediary and advisor. (3) Arbitration, in which the parties fully submit to the BPSK assembly for the purpose of deciding and resolving consumer disputes.

In addition to efforts to resolve consumer disputes through court or out of court, Law Number 8 of 1999 also opens up opportunities for the disputing parties to seek a peaceful dispute resolution. the settlement carried out by the two parties to the dispute (business actors and consumers) without going through a court or the Consumer Dispute Settlement Agency and does not conflict with Law Number 8 of 1999. Amicable settlement can refer to an agreement reached through consideration between business actors and consumers on the form and amount of compensation.

Business actors that do not file an objection within 14 days are considered to have accepted the BPSK decision and must implement it within 5 working days of the deadline for filing an objection. [27] If out of Court consumer dispute Resolution effort has been chosen, Lawsuit through the Court can be taken if this is declared unsuccessful by one of the disputing parties. [21] Settlement of disputes outside the court doesn't eliminate criminal responsibility as stipulated in the law.. Thus, to protect consumer rights based on Law Number 8 of 1999, consumers who are victims of fraud and are harmed in E-Commerce transactions can take legal action through dispute resolution in court or outside the court.

5. CONCLUSION

According to Law Number 8 of 1999, Consumers who are victims of fraud and are harmed in E-Commerce transactions can take legal action through dispute resolution in court, ordinary/conventional civil lawsuits, class actions, and legal standing, or through disputes resolution outsidecourt, through disputes resolution center. In addition to court-based and out-of-court attempts to resolve consumer disputes, Law Number 8 of 1999 also provides opportunity for conflicting parties to seek a peaceful resolution of their differences. Without going through a court or the Consumer Dispute Settlement Agency, the two parties to the dispute (business actors and consumers) reach an agreement that is not in conflict with Consumer Protection Law Number 8 of 1999.

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