

# The Responsibility of Trading Through Electronic System Company in Terms of Negligence (A Case Study of Lazada Vs Achmad Supardi)

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## ABSTRACT

The internet has recently become a very important medium in everyday life and provides many benefits, one of which is the emergence of e-commerce. E-commerce itself uses the internet as a medium to provide information about certain goods being sold, such as descriptions of goods, pictures of goods sold, until the price is set by the seller. Even though there are many advantages or benefits that people get from buying and selling online or e-commerce, it is not impossible for problems to arise. One of the problems that arise is a problem in the agreement in the form of negligence. This negligence occurred when Achmad Supardi bought 4 motorbikes that were quite cheap, the money had been transferred by Achmad Supardi, but the transaction was canceled by Lazada and the money paid was only replaced in the form of vouchers. In accordance with Article 4 of Law no. 8 of 1999 concerning Consumer Protection, Consumers are entitled to compensation, compensation and/or replacement, if the goods received are not in accordance with the agreement or not properly. After the compensation was given by Lazada, there was a problem, namely the form of compensation provided by Lazada did not match the form that was first transferred by Achmad Supardi. To answer this problem, the writer uses normative research, descriptive research, and secondary data. So the result of this research is the lack of responsibility from Lazada to Achmad Supardi in compensation. Therefore, there is a need for guidelines for transactions in e-commerce.

**Keywords:** E-commerce, Negligence, Responsibility

## 1. INTRODUCTION

Internet in recent times is a very important medium in everyday life and provides many benefits, the most important of which is that it becomes faster and easier to get the information we need to do something. So from these benefits, the internet is used as a medium that connects people from any part of the world to interact without being limited by space and time. As a result of the rapid development in information technology, it can be seen in so many people who use the internet network, which also encourages the public's need to conduct trade transactions using the internet network. The emergence of the internet is also felt by many business people that this internet also brings many benefits to businesses from the business people themselves, the benefits are in the form of transactions that become easier, more practical, and faster so that businesses also become more efficient because of this.

Various types of transactions belonging to the conventional type of business interaction are changing rapidly from what was originally a conventional trade, namely a meeting between a seller and a buyer who then both agree to make a

sale and purchase transaction. It has turned into a more modern trade, namely through the use of the internet network. Transactions using the internet network are believed to be more efficient both in time and space. In fact, this transaction can occur quickly without a direct meeting between the seller and the buyer. Trade that uses internet technology is known as electronic commerce or commonly abbreviated and known as e-commerce. This e-commerce according to Government Regulation No. 80 of 2019 concerning Trading Through Electronic Systems is referred to as Trading Through Electronic Systems or commonly abbreviated as PMSE, namely Trade whose transactions are carried out through a series of electronic devices and procedures.[1]

Currently, there are 2 types of business, namely the Pipeline business type, where the business model from the planning, product manufacturing, and product marketing processes is entirely carried out by the company itself, and another type of business, namely the Platform business where the business model is carried out by creating media that is equipped with certain rules, where sellers and buyers can directly interact in it, and still follow the applicable rules that have been made by the company. And e-commerce is

included in the type of business platform. Examples such as Lazada, Tokopedia, Shopee, and other e-commerce. E-commerce is believed to have enormous potential in developing a business because e-commerce itself is a buying and selling process that is carried out using the internet. All buying and selling transactions carried out through the internet are carried out without face-to-face contact between the parties. The seller of this e-commerce itself uses the internet as a medium to provide information about certain items being sold such as descriptions of goods, pictures of the goods being sold, until the price is set by the seller. All buying and selling transactions via the internet are carried out without any face-to-face contact between the parties, they base the sale and purchase transactions on mutual trust, so that the sale and purchase agreements that occur between the parties are carried out electronically.[2] Conventional transactions that are usually carried out are trading systems where there is a direct meeting between the seller and the buyer, then immediately agree on the sale and purchase of an item, turning into a transaction that uses an online system which is very far from conventional transactions where the seller and the buyer themselves do not meet directly and the goods being traded can only be seen in the form of pictures and also a description that explains the specifications of the goods to be sold.

This e-commerce transaction itself has its own characteristics, including that this transaction is paperless (without written documents), borderless (without geographic boundaries) and the seller and the buyer themselves do not need to meet face-to-face. The seller himself only needs to show photos of the products he sells, along with a description explaining the specifications of the products he sells on an existing site or e-commerce platform, then if there are interested buyers, the buyer can contact the seller via e-commerce site or platform that has been provided and then processes the purchase if there is an agreement between the seller and the buyer. After an agreement is made, payments can be made immediately by transferring some money to the seller's account or using a VA (Virtual Account) if using an e-commerce platform.

Even though there are many advantages or benefits that people get from buying and selling online or e-commerce, it is not impossible for problems to arise. The problem can be psychological, legal or economic. Problems that are psychological in nature, for example, are that almost all prospective buyers from an online store feel uncomfortable and lack trust when they make online transactions for the first time. The emergence of a sense of doubt over the description given by the seller because the buyer does not see the goods sold by the seller directly.

There are also several things that often arise when conducting buying and selling transactions through electronic media, which include agreement issues, legal protection of the agreement, and also dispute resolution in the event of a default between the seller and the buyer. In practice, the implementation of this online sale and purchase agreement raises several problems, for example, the buyer has a responsibility to pay the agreed price with the seller for the goods purchased, but does not make the payment. Parties who do not carry out their mutually agreed

responsibilities can be sued by the party who feels aggrieved. The benchmark for an agreement to be valid by law is to fulfill the 4 conditions for the validity of an agreement contained in Article 1320 of the Civil Code (KUHPer). Article 1320 of the Criminal Code has 4 conditions for the validity of an agreement that must be fulfilled, namely:

- a. There is an agreement from the parties that bind him
- b. The ability to make an engagement
- c. Regarding a certain subject
- d. A lawful reason

In an effort to respond to legal developments that occur, namely buying and selling via the internet, the government issued a regulation, namely Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. In Law Number 19 of 2016 there is an understanding of electronic contracts. Electronic contracts according to Article 1 number 17 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions are defined as parties' agreements made through the Electronic System. Article 18 paragraph (1) of the Electronic Information and Transaction Law states that "Electronic transactions as outlined in an Electronic Contract are binding on the parties", So the electronic transactions as outlined in the electronic contract are binding on the parties, both the seller and the buyer.

Based on Article 18 paragraph (1) of the ITE Law, if the business actor cannot account for the promises given in the advertisement made by the seller, then the seller can be said to have committed an act of default against the buyer because it cannot fulfill its performance. Achievements that can be in the form of a description of the goods, the authenticity of an item when compared to the photos provided by the seller.

Examples of cases of default in e-commerce or online buying and selling transactions are: there was a victim named Achmad Supardi, he became a victim of the Lazada e-commerce site. This Lazada e-commerce site has violated the Consumer Protection Law Number 8 of 1999. There are 3 articles that are violated by Lazada e-commerce, namely: article 9, article 10, and article 16. Article 9 is "business actors are prohibited from offering, produces or advertises goods and services incorrectly, or as if the goods have met a discount, special price, quality standards, the goods are in good condition, the goods and services have received sponsorship or approval, using excessive words such as safe, cheap and offer something that is not certain, while in article 10 it is stated that "business actors in offering goods or services intended for trading are prohibited from offering, promoting, or making false or misleading statements regarding prices or tariffs, the use of goods, offers of discounts attractive prices and prizes", and also Article 16, namely "business actors in offering goods or services through orders". it is prohibited to not keep orders or agreements on completion time and not to keep promises, and for business actors who violate the provisions contained in articles 9 and 10, can be sentenced to a maximum

imprisonment of 5 (five) years or a maximum fine of Rp. 2,000,000,000, while for violations committed against the provisions of article 16, a maximum of 2 (two) years in prison or a maximum fine of Rp. 500,000,000. Meanwhile, according to Article 63, business actors can have their business licenses revoked.

For the chronology of this case, Achmad bought 1 unit of Honda Vario motorcycle and 3 units of Honda Revo motorcycle on December 12, 2015 at Lazada e-commerce, the total for 3 units of Honda Revo was purchased at a price of Rp. 500,000 each, the total being Rp. 1,500,000 and Honda Vario purchased at a price of Rp. 2,700,000 for cash on the road purchases, not credit, and the figure is not credit and the amount is not a down payment, and Achmad thought the low price was part of the National Online Shopping Day (Harbolnas) promotion, and he had made transfer payments via ATM BCA, and the transaction was legal and confirmed by Lazada, then on December 14, 2015, Achmad reopened the Lazada e-commerce site and there was an additional section that the price of the motorbike was already a credit price. 2 days later, Achmad checked the status of the transaction on Lazada e-commerce and he was surprised because the confirmed transaction and just waiting for delivery turned out to be rejected and closed by Lazada e-commerce. E-commerce Lazada processes refunds that have been given by providing shopping vouchers according to the amount of money spent to buy 4 motorcycle units of Rp. 4,200,000. For the settlement of this case, Lazada only provides compensation in the form of a refund according to the amount that Achmad has paid at that time, but the form of this compensation is only in the form of a voucher, which is when Pak Achmad pays using cash. Of course, there is a difference in liquidity between cash and vouchers, because cash can be used as payment anywhere, while the voucher itself can only be used on Lazada.

Along with the development of information technology, there are also many developments that occur in the economic field, and online buying and selling that occurs is not only found in Lazada e-commerce, but many other e-commerce sites such as OLX, Tokopedia, Shopee and many more. Even social media sites such as Instagram, and Facebook itself can also be a place to open an online business and promote the goods they sell. In line with the development of e-commerce, there are also legal problems that have arisen, such as objects being traded, agreements between the buyer and seller, then how to resolve disputes in the event of a default between the two parties, and also how to protect consumers against buyers in the event of a default from the seller in this e-commerce.

## 2. METHOD

The type of research used in this research is normative research, normative legal research, namely research conducted by analyzing written law from library materials or secondary data, better known as secondary legal

materials and reference materials in the field of law or legal reference materials.[3]

The nature of the research used by the author related to the type of research above is descriptive research. Descriptive nature means that this research is expected to obtain a detailed and systematic description of the problems studied. The analysis is entered based on the description of the facts obtained will be carried out carefully how to answer the problem.[4]

The type of data used by the researcher is secondary data, because the research was conducted using library materials as the main reference.

Sources of data used in this study are:

- a. Primary legal materials are legal materials that are authoritative, meaning they have authority. These primary legal materials consist of legislation, official records or minutes in the making of legislation and judges' decisions [5], consisting of:
  1. Civil Code (KUHPer)
  2. Law Number 8 of 1999 concerning Consumer Protection
  3. Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions
  4. Government Regulation Number 80 of 2019 concerning Trading Through Electronic Systems.
- b. Secondary Legal Materials are books that provide explanations of primary legal materials such as books that describe written material written by scholars, and teaching materials.
- c. Tertiary Legal Materials, namely dictionaries, encyclopedias, materials from the internet and others which are legal materials that provide explanations of primary legal materials and secondary legal materials.

## 3. ANALYSIS

In this case, it can be categorized as compensation for losses that occur based on default, where Lazada does not fulfill the consumer's right to provide goods that have been purchased by the consumer and the business actor is not fully responsible for the loss suffered by the consumer. Basically, compensation obtained due to default is the result of not fulfilling the main obligation of business actors, namely to provide goods that are in accordance with what has been purchased by consumers.

Based on Article 4 of the Consumer Protection Law, consumers have the right to get advocacy, protection, and efforts to resolve consumer protection disputes properly. Then, based on article 7 of the Consumer Protection Law regarding the obligations of business actors, business actors are obliged to treat or serve consumers correctly and honestly and not discriminately. In accordance with Article 4 and Article 7 of the Consumer Protection Law, the Consumer, namely Achmad Supardi, can claim the right to get compensation, compensation or replacement, if the goods received are not in accordance with the agreement that has been made. And for Lazada, they should treat and

serve consumers in accordance with what has been regulated in Lazada's terms and conditions and also in the relevant laws governing online buying and selling transactions. In this case, it can be categorized into compensation based on default. Where Lazada does not fulfill the consumer's right to provide goods that have been purchased by consumers and also business actors are not fully responsible for the losses that have been experienced by consumers.

If based on the theory of justice specifically, namely distributive justice. This distributive justice is justice that gives each person a portion that is in accordance with the achievements he has done. For example, in the case raised by the author, Achmad Supardi has made an achievement, namely giving an amount of money that has been agreed upon by both parties, but Lazada did not perform what it should have done, but instead provided goods in another form, namely vouchers.

Based on the results of interviews with the late. Dr. Steven Leonardi, S.H, M.H., LL.M., C.L.A, C.M., Lazada party is also in default in providing goods, because there are only 2 types of goods, namely money and objects, in the transaction, Achmad Supardi bought a motorbike, but what Lazada gave was only goods in the form of vouchers, which clearly did not match what was agreed upon in the agreement. Lazada is an intermediary as well as a seller, but in this case, Lazada is at fault as a seller, because it cannot provide what has been ordered but is given in another form. Besides being negligent in providing the goods that have been agreed upon, Lazada is also not fully responsible for compensation for losses suffered by the consumer.

Consumer protection in this case includes two aspects, namely protection of goods received that are not in accordance with the agreement that has been made and protection against conditions that are detrimental to consumers. a business actor who sends goods but does not match the description given to the goods, can be considered to have committed an act of default, because the business actor does not fulfill his obligations in the electronic contract, causing losses to consumers. As for other types of defaults committed by business actors, namely business actors making achievements, but not as they should be, where business actors send goods but do not match the picture as expected or desired by consumers who buy the goods.

Rules regarding e-commerce are also contained in Law Number 7 of 2014 concerning trade. If based on the case that the author raises, the business actor has violated the regulations in Article 65 paragraph (1) which reads: "every Business Actor who trades Goods and/or Services using an electronic system is obligated to provide complete and correct data and/or information." And also in paragraph (2) which reads: "Every Business Actor is prohibited from trading goods and/or services using an electronic system that is not in accordance with the data/information as referred to in paragraph (1)" For Data and/or information that must be provided, at least contain:

- a. Identity and legality of Business Actors as Producers or Distribution Business Actors;

- b. Technical requirements of the goods offered;
- c. Technical requirements or qualifications for the services offered;
- d. Price and method of payment for goods and/or services; and
- e. How to deliver goods.

If the business actor who trades goods on the electronic system does not provide complete and clear information, then according to Article 65 Paragraph (6) of the Trade Law, the business actor may be subject to administrative sanctions in the form of license revocation.

From the article, it can be concluded that the Business Actor should provide clear and correct prices and payment methods for goods and/or services. What happens in the case is that a price that can be categorized as cheap is given, then after the transaction has been transferred by the consumer, the transaction is canceled by the Business Actor. There is also Article 4 of the Consumer Protection Law, namely the right to correct, clear, and honest information regarding the conditions and guarantees of goods and/or services.

Contracts made in e-commerce transactions themselves are certainly different from buying and selling which are carried out face-to-face or directly, namely by using electronic contracts. Based on Article 1 number 17 of Law Number 11 of 2008 (UU ITE), it stipulates that an electronic contract is an agreement between the parties made through an electronic system. The terms regarding the electronic contract itself are not fully regulated in the ITE Law, therefore, all the conditions stipulated in the agreement in Book III of the Civil Code apply to determine the legal requirements of an electronic contract.

The electronic transactions used by Achmad Supardi and Lazada itself use the Business to Consumer mechanism. This mechanism involves business actors selling their goods to other consumers on the internet through an e-commerce platform, so the contracts that arise in this transaction are in the form of electronic contracts. The electronic agreement that occurs in this contract arises when the customer agrees with the user agreement which contains the rights and obligations of the customer, marked by the presence of an electronic signature.

An agreement that is declared valid is an agreement that meets the four conditions contained in Article 1320 of the Civil Code, namely:

1. Agree on those who bind themselves;
2. The ability to make an engagement;
3. Regarding a certain matter;
4. A lawful cause.

The agreement always begins with an offer from one party and is followed by a response from the offer in the form of acceptance by the other party. If the offer is not responded to by the other party, then no agreement will occur. Therefore, it takes two parties to come up with an agreement. In a direct sale and purchase agreement, the agreement can be easily identified. Because in transactions carried out directly, a person can state his agreement both orally and in writing. In contrast to transactions made

through electronic media or via the internet. Execution of transactions conducted through electronic media or through the internet. The implementation of transactions in e-commerce certainly cannot be done verbally, because in this case the seller provides an offer for the goods he sells through a website or e-commerce application that is designed in such a way as to attract the interest of potential consumers so that the website or e-commerce application the commerce is visited. All internet users can freely access the e-commerce to simply view or buy the goods they need or are interested in. Usually, on the website or e-commerce application, prices and descriptions of the goods to be sold are listed.

If the buyer is interested in buying an item, the buyer only needs to click on the item according to his wishes and then fill in the consumer data regarding the delivery address for the goods ordered by the consumer. After the request for the purchase of the goods arrives at the seller's place, the seller will send a message via e-mail or through an e-commerce application where the buyer makes a transaction to confirm the order to the consumer.

As mentioned above, the conditions for the two agreements contained in Article 1320 of the Civil Code are legal competence. Basically everyone is capable of making an agreement, unless he is declared incompetent by law. Incompetent according to the law are those who are not yet mature and those who are under guardianship. In e-commerce transactions, it is difficult to determine whether the person conducting the transaction is an adult or not, because the offer and acceptance process is not carried out directly but only through virtual media which is prone to fraud. Usually, e-commerce anticipates this by requiring each consumer to fill in data first, regarding the full name and place and date of birth of the consumer before being able to access the e-commerce further. However, data falsification can also occur and if it turns out that the person conducting the transaction is an incompetent person, then the aggrieved party can demand that the agreement be cancelled.

In addition to consumers having legal skills, transactions carried out in e-commerce certainly require clarity about the goods to be sold. As regulated in Article 511 of the Civil Code, the intended type of goods must only be determined and the law does not require the existence of the goods to be in the hands of the buyer or not at the time of the agreement.

Everything that is done in the sale and purchase agreement must not conflict with the law, in accordance with decency, and in accordance with public order. If this is not fulfilled, then the agreement made can be canceled by one or both parties. The agreement on transactions through e-commerce must be in accordance with book III of the Civil Code and the ITE Law.

In the case between Achmad Supardi and Lazada, the consumer received incorrect information about the price of the motorbike he wanted to buy on the Lazada shopping page and the price was not a down payment or credit. Meanwhile, Lazada only solved the problem by returning Achmad Supardi's money in the form of a shopping voucher that can only be used for shopping at Lazada. The money

returned by Lazada should be returned to its original form, namely Cash which was transferred back to Achmad Supardi's account.

Based on article 1338 of the Criminal Code, the law of contract in Indonesia adheres to a principle, namely the principle of freedom of contract. This principle gives freedom to the parties who agree to form an agreement to determine for themselves the form and content of an agreement that they will agree on. Thus, the parties who make the agreement can regulate their own legal relationship that occurs between them. As in conventional trade which is usually done face to face, e-commerce trade also creates an engagement between the parties to provide an achievement. The implication of the engagement is the emergence of rights and obligations that must be fulfilled by the parties involved.

If seen in this case, there were buying and selling activities between Achmad Supardi and Lazada. Sale and purchase is one type of agreement that has been regulated in the Civil Code, while e-commerce is basically a modern buying and selling transaction model that uses technological innovations such as the internet as a transaction medium. Thus, as long as it is not agreed otherwise, the general provisions regarding engagements and sale and purchase agreements as regulated in Book III of the Civil Code apply as the legal basis for e-commerce activities in Indonesia. If in the implementation of the e-commerce transaction a dispute arises, then the parties can seek a resolution in the provision.

Based on the results of interviews with Dr. Anna Maria Tri Anggraini, S.H., M.H who is a practitioner and theorist in the field of Consumer Protection, the responsibility of a business entity in the event of a default is to look back at the contract that has been agreed upon by both parties who entered into the agreement. If the agreement is regarding the sale and purchase agreement of goods, then the seller as a business actor has an obligation to deliver the goods that have been purchased by the buyer and the buyer as the consumer itself also has the obligation to pay according to the contents of the contract they have agreed upon. And if there is a default by the seller, the legal consequence of the default is to return to the contents of the contract that both parties have agreed on, at least the money that has been paid by the buyer through the transfer system is returned to the buyer in the same amount and form. in accordance with what was paid by the buyer at the beginning of the transaction. However, compensation is usually also given in the form of compensation because the seller has announced in the public space the sale of motorbikes that can be said to be cheap on the Lazada Platform. In this case, there are 2 (two) business actors, namely the Platform Owner (market place) and the merchant (merchant) who deposit their goods on the platform. The most responsible in this default is the merchant, because he is the seller of the agreed goods, but the platform owner is also responsible for the goods/services sold on the e-commerce platform. In this case, Lazada becomes the Seller as well as the Owner of the Platform. It is appropriate for the party who defaults to provide compensation, not exchanging money with vouchers that are not needed by the buyer/consumer, and

because the initial form paid by the buyer/consumer is also cash.

#### **4. CONCLUSION**

The author concludes that in the case that the author raised regarding the responsibility of the PMSE business entity in the event of a default, Achmad Supardi bought 4 motorbikes at a price of Rp. 4,200,000 which is the promo price at the Harbolnas event on the Lazada e-commerce Platform.

This price is not the price of a down payment or credit, but has been paid in full, and has been transferred by Achmad Supardi. Then, it was canceled by Lazada and the money transferred by Achmad Supardi was Rp. 4,200,000 returned, but in the form of a voucher which can only be used on the Lazada e-commerce Platform. Lazada has violated Law no. 8 of 1999 concerning Consumer Protection article 4 point 3 which contains the rights of consumers to correct, clear, and honest information regarding the conditions and guarantees of goods and/or services.

In this case, Lazada in addition to being negligent in providing the goods that have been agreed upon, Lazada is also not fully responsible for compensation for losses suffered by the consumer because it only provides compensation in the form of vouchers which are clearly not as liquid as cash that has been paid. transferred by Achmad Supardi at the beginning of the transaction.

For consumers, consumers must sort and choose and be extra careful when conducting e-commerce transactions, and also read the rules of the transaction, because usually the terms and conditions are not read by consumers.

For business actors, business actors must be transparent about offers submitted to consumers, apart from consumers must be careful, business actors must also be responsible to consumers. Business actors should also provide a means of complaint for consumers who have suffered losses due to transactions that have been carried out.

For the government, it must monitor and evaluate e-commerce business actors who take actions that cause harm to consumers, and so that there is a deterrent effect for those who commit acts of violation

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