

Liability of Instagram Social Media Platform as an Advertising Service Provider in Case of Online Shop Fraud

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ABSTRACT

In this era, with rapid technological advancement, nowadays people can do trade and sell using liability online system, especially on the social media which is Instagram Platform. Trades carried on Instagram have a risk, because dealing without meet face to face. By Juridical, do trade and sell on Instagram is not correct/safe. So that's why legal certainty of liability on platform provider is essential in order to protect the consumer. If the consumer got losses, legal efforts are required to ensure consumer rights. Referring to the issue, the writer conducted research using the normative method and also did interview with several sources. The result from research, shows that liability of the platform provider in the positive law of Indonesian remains inadequate and is needed in the renewal of certain legal regulation. The institutions with authority on consumer cases be supposed to always inform information about consumer right so the consumer can understand the incumbency of the consumer. Reform into laws that regulate electronic transactions is needed in order to protect consumers while doing transactions electronic.

Keywords: *Liability, Legal efforts, Platform Provider*

1. INTRODUCTION

Technological advances, especially in Indonesia has undergone rapid development, this can be seen from the daily activities of Indonesian people by using technology for the purposes of life. A real example of the use of technology by the public for the purposes of life is when doing trade. Trading in question is a community activity when selling and buying goods that were once done face to face but with technological advances, the activities of selling and buying goods no longer need to be face to face, but can be done online. This buying and selling activity is included in electronic transactions. Electronic transactions are legal acts conducted using computers, computer networks, and/or other electronic media. People when they want to do online buying and selling activities can be done through social media platforms and e-commerce platforms. Some examples of social media platforms and e-commerce platforms are Instagram, Facebook, Twitter, Shopee, Tokopedia, Lazada and so on. Providers of these platforms are referred to as electronic system operators. Electronic system operators are everyone, state operators, business entities, and communities that provide, manage, and/or operate electronic systems, either individually or jointly to users of Electronic Systems for their own purposes and/or the needs of other parties. In Law No. 11 of 2008 on Information and Electronic Transactions states that

electronic system operators must conduct electronic systems reliably and safely and be responsible for their electronic systems.

Doing business on platforms can occur due to technological advances. Platform businesses can bring manufacturers and consumers together on high-value exchanges. Business Platform is a way to connect parties in the market two sides namely application developers and application users who will award value for both. As the number of participants on each side grows, then the value will increase, this is referred to as the "network effect" which is the center of the platform strategy. The platform has an ecosystem with the same basic structure, consisting of four types of parties involved. The first is the owner of a platform that controls intellectual property and governance. Second, the Provider serves as a platforms interface with the user. Third, the Manufacturer who made the offer. Fourth, consumers who use the offer (Alstynne et al., 2016).

Of course, doing business on the platform or doing trading and buying through the online system has its drawbacks. The disadvantage of doing online buying and selling activities is that buyers do not meet in person to see and touch the goods to be ordered. Doing online buying and selling activities also has a negative impact. The negative impact caused in conducting online buying and selling activities can result in small losses as well as large losses to the parties involved in it. A frequent case is an online fraud case. This online fraud case is included in cybercrime.

Cyber Crime is a criminal activity whose main means are computer networks that are targeted in committing crimes or referred to as virtual world crimes [1].

Like the case experienced by an Instagram user named Dinda Audriene who was tricked when buying clothes at an online shop. Victims buy clothes because they are interested in seeing ads from Instagram. After selecting the goods and testifying through the Whatsapp application, the next day the victim received a call claiming to be a customs and excise party that questioned about the delivery of products that are clothing for women. The victim also asked the online shop admin for certainty. The online shop admin confirmed that and suggested asking the owner of the online shop. The victim contacted the owner and received no reply. Then the victim checks the online shop account and it turns out that the name of the online shop account has been renamed and the victim's number has been blocked by the admin and the owner of the online shop. Like the case experienced by an Instagram user named Dinda Audriene who was tricked when buying clothes at an online shop. Victims buy clothes because they are interested in seeing ads from Instagram. After selecting the goods and testifying through the Whatsapp application, the next day the victim received a call claiming to be a customs and excise party that questioned about the delivery of products that are clothing for women. The victim also asked the online shop admin for certainty. The online shop admin confirmed that and suggested asking the owner of the online shop. The victim contacted the owner and received no reply. Then the victim checks the online shop account and it turns out that the name of the online shop account has been renamed and the victim's number has been blocked by the admin and the owner of the online shop. As a result, the clothes purchased by Dinda Audriene never got to her place. That makes the victim believe so buy clothes in the online shop because the online shop put an ad on the instagram platform. On Instagram if a user is selling, they can promote their merchandise by installing Instagram ads [2].

With the occurrence of this fraud case makes the victim or also called the consumer harmed, the need for protection for consumers. The purpose of consumer protection itself is to increase consumer empowerment in demanding its rights as a consumer. The purpose of organizing, developing and protecting consumers is to increase the dignity and awareness of consumers and indirectly encourage businesses in conducting their business activities carried out responsibly [3].

In the case of Dinda Audriene, Dinda Audriene who has made a payment to the seller but the purchased goods are not accepted. That means Dinda Audriene as a consumer does not receive her rights. Therefore, the need for law enforcement so that the guilty party must be held accountable. The author sees this case should be the platform provider and the merchant should be held accountable for the losses incurred Dinda Audriene namely business people and parties from Instagram. Businesses are responsible for providing compensation for consumer losses due to fraud committed by businesses while from Instagram must also be responsible because Instagram as a platform and ad service provider. In this study, the authors

will focus research on accountability by social media platform Instagram and what legal efforts can be made in the event of fraud.

2. METHOD

Research method consists of two words, namely method and research. Method is a scientific activity related to a way of work (systematic) to understand a subject or object of research, as an effort to find answers that can be accounted for scientifically and including its validity [4], while research is a translation of The English language: research that is interpreted as effort or work to trace / re-search done by a certain method and in a careful, systematic way to the problem, so that it can be used for the benefit of science and solving / answering problems [5]. Research method is required to compose a scientific work therefore the research method used as follows: In general, there are several types of research that can be used, namely normative law research and empirical law research. In this study, the authors used a type of normative legal research. Normative research is research conducted using legal materials by studying theories, concepts, and legal principles along with the rule of law related to research or research focused on reviewing the application of rules or norms in positive law [6]. This research is descriptively analytical, namely by describing the prevailing laws and regulations associated with legal theories and practices of positive legal implementation related to the problem [7].

3. DISCUSSION

3.1. Liability of Instagram Social Media Platform Provider in Accordance with The Laws in Indonesia

The regulation on the responsibility of the platform provider is regulated in several legal rules, namely the Information and Electronic Transactions Act (ITE Law), the Consumer Protection Law (UUPK), and the Government Regulation (PP) on System Operators and Electronic Transactions. Platform providers in the ITE and PP Laws are referred to as electronic system operators. Platform is a container in the form of internet sites, applications, or other content services based on the internet used to conduct transactions / facilitate trades that occur through electronic systems. With the sophistication of technology now, in general people trade online through platforms that are used to be a container for conducting electronic transactions. By easily accessing the platform, therefore the platform itself becomes vulnerable to abuse that can be done by the account owner Abuse means that the account owner may intentionally enter information that could harm other users/ consumers or information that violates the law.

An example of a platform that can be used to do trade and buy and sell goods is Instagram. Buying and selling

transactions conducted on Instagram itself is legally not appropriate to do because Instagram platform is a social media platform that should have the purpose to meet the needs of remote communication or socializing between fellow users of electronic systems. If we look at the case experienced by Dinda Audriene, at that time Dinda Audriene bought clothes in the online shop that she saw through advertisements that appeared on Instagram. When Dinda Audriene had made the payment, it turned out that the purchased item never arrived and the online shop had changed its name and blocked Dinda Audriene's account. Looking at the case, it can be said that Instagram should be able to be responsible for what happened to Dinda Audriene because the main cause of Dinda Audriene buying goods in the online shop is the ads that appear from Instagram itself. According to Article 3 PP No. 71 of 2019 concerning the Implementation of Electronic Systems and Transactions, it is said that electronic system operators must conduct their electronic systems safely and reliably and be responsible for the implementation of electronic systems. Broadly speaking, the reason for the fraud is because of the "ads" that exist on Instagram. This means that the electronic system is Instagram can be said not "safe" in conducting electronic transactions because it has shortcomings. However, regarding the responsibility of the platform provider in the governing law, there is a paragraph stating that if in some certain cases the platform provider can prove that the occurrence of errors or omissions is due to the merchant or consumer then the platform provider should not be responsible. Judging from the case raised in the study, the goods sold by the online shop on Instagram are clothes for women and clothes are custom which means sewn first. This means that the goods sold are not included in the prohibited content. However, the problem is not in the goods sold but in the online shop. Based on the case, this online shop person never sends an order item and even blocks the victim's Instagram account number, then this person renames the online shop. The Platform Provider should be able to protect users who use its platform and the public for any losses incurred as a result of its electronic systems/platforms. That means Instagram platform should have special rules governing about online shop. In the Trade Law, article 65 paragraph 1 states that every business that trades using electronic systems must provide data or information correctly and completely. Basically, buying and selling transactions on Instagram platform is not right. Based on the results of the interview, the Instagram platform is a social media platform that should aim to socialize between users and other users. In general, the platform is considered as a third party involved in the activities of buying and selling transactions conducted by merchant and consumers, then the responsibility is charged to the merchant). Judging from the Circular Letter of the Minister of Information No. 5 of 2016, briefly the responsibilities of businesses / merchants are:

1. Responsible for the content uploaded by the merchant, in accordance with the rules regarding obligations that have been regulated.
2. Responsible if there are reports of content uploaded by the merchant.

3. Responsible based on the terms & conditions specified by the platform provider.

Thus, it can be said that according to these rules, the issue of liability is not entirely the responsibility charged to the platform, but also to merchant. Based on the data of the research results, the responsibility of the platform provider or so-called electronic system operator is that the electronic system operator only has responsibility with the operation of its electronic system so that the electronic system is reliable and safe. Regarding the advertising feature on Instagram platform, Instagram has carried out its responsibility correctly which is to remove the content of ads that are considered illegal.

However, judging from the case of Dinda Audriene, indirectly Instagram can be held civil liability because Instagram can be considered to allow ads "illegal goods" that are aired on its platform. Seen from the other side, there are also platform providers considered as Business Actors in the field of service providers in the UUPK rules, then the responsibility of businesses (platform providers) is to provide compensation for losses suffered by consumers due to using goods and / or services. Compensation provided is possible in the form of refunds or reimbursements in the form of similar goods and/or services or can be in the form of health care, depending on what losses are experienced by consumers. We as consumers have a right to feel safe and we deserve clear information. The current regulations governing the responsibility of electronic system operators/platform providers are deemed insufficient to guarantee legal certainty to consumers. It is unclear which rules govern the responsibility of the operator of this electronic system that creates legal uncertainty. There is a special rule born from the ITE Law that regulates more specifically regarding the operator of electronic systems, namely PP No. 71 of 2019 on the Implementation of Electronic Systems and Transactions. This particular rule, does not govern further regarding disputes that could occur in electronic systems.

It should have been the rule of law on electronic transactions to be updated. With the advancement of technology now, it is felt that the laws governing electronic transactions are not adequate. Special rules are needed that govern online shop so that platforms especially Instagram can further tighten the rules in its platform in terms of online shop. Indeed, basically Instagram platform is used not to conduct electronic transactions, but with the ease obtained from the facilities on the Instagram platform, many Instagram users who use this facility to be used as a shop to try. The ease of these Instagram facilities that can cause violations of the law. Neither Instagram nor the government should take this issue lightly. This is what causes protection problems for consumers when doing sales and buying activities that occur on Instagram is very weak. Although the activities of the sale and purchase transactions that occur on Instagram are juridically incorrect, the Instagram should not seem to ignore that problem. Instagram should have known that Instagram platform has been used by many parties to do business / trade. Therefore, Instagram must make updates about its electronic system. According to the

authors, the platform's policy to remove/block content deemed illegal is still ineffective. Stricter rules are needed, because regarding the fraud case that occurred to Dinda Audriene, the ads seen by Dinda Audriene are not included in the illegal ads, therefore Instagram does not remove ads that appear but the problem to the online shop that advertises. It can be said that Instagram has "flaws" in its system until there are still many users of electronic systems who use this blame to do something that could harm other users or unlawful acts.

It takes legal certainty to regulate on this issue, because what has been discussed that the buying and selling activities on Instagram is juridically inappropriate. Therefore, based on the basis of theory, legal certainty can require that the efforts of legal regulation in the legislation made by the parties who have authority in the legal arrangements, so that the rules have a juridical aspect that can guarantee legal certainty serves as a rule of law that must be obeyed. The rules regarding the responsibility of the platform provider must also be updated to be clearer. In accordance with the theory of absolute responsibility that is an act that violates the law without questioning the error, so even if the person's actions are done intentionally or unintentionally the person remains responsible for the losses incurred.

3.2. Legal Efforts That Can Be Done by Users of Electronic Systems / Consumers.

Judging from the case experienced by Dinda Audriene who was harmed by a trade transaction conducted by Dinda Audriene with an online shop person that occurred on the Instagram platform, as a user of the electronic/consumer system, Dinda Audriene can make legal efforts to defend her rights, in accordance with article 4 of the UUPK that we as consumers have the right to obtain defense and protection as well as efforts in resolving disputes related to protection for consumers.

Legal efforts that can be done by Dinda Audriene that if she positions herself as a user of electronic systems, Dinda Audriene can make a lawsuit to the provider of the platform in this matter that is Instagram in accordance with the ITE Act, because it can be said that Dinda Audriene suffered losses due to advertising features made by Instagram. PP on The Implementation of Electronic Systems and Transactions still does not regulate if there is a dispute in the scope of the implementation of electronic systems and transactions, then if there is a dispute within that scope, the regulations applied are the ITE Law [8]. So this legal effort that can be done in accordance with article 38 and article 39 of the ITE Law, in short states that people can make a lawsuit to the party responsible for the implementation of electronic systems. The community in making this lawsuit can be done in a representative or can be represented. This civil lawsuit is conducted in accordance with applicable rules. In addition to resolving disputes through the courts, the parties may resolve disputes through arbitration or other alternative institutions in accordance with applicable rules. The role of the government also protects the interests of the

general public from interference that can occur as a result of misuse of information and misuse of electronic transactions that can be disruptive.

Whereas if we position ourselves as consumers then legal efforts can be done in accordance with the UUPK. In accordance with the UUPK stated that consumers who suffer losses can make a lawsuit to businesses through authorized institutions in handling problems that occur to consumers and businesses or can solve problems through the public judiciary. As already discuss that the platform provider / operator of electronic systems is considered as a business actor according to the UUPK. According to article 44 of the UUPK there is a so-called Non-Governmental Consumer Protection Agency (LPKSM). LPKSM is a non-governmental institution registered and recognized by the government that has activities to handle consumer protection. In addition to LPKSM institutions, there are other institutions that are also established by the government in order to solve consumer problems, namely the Consumer Dispute Resolution Agency (BPSK) and the National Consumer Protection Agency (BPKN). Consumers can report problems to these agencies. In the event of a dispute, the consumer may make other legal efforts, namely through the court or outside the court in accordance with the agreement of the parties involved. Consumers who suffer losses, can make a lawsuit to businesses through authorized institutions to resolve problems that occur between businesses and consumers, namely the institutions mentioned above.

As for some way of resolving the matter outside the court that can be done in case of dispute. The mechanism in resolving disputes outside the court or so-called Alternative Dispute Resolution (ADR) is carried out by means of arbitration, conciliation, mediation, negotiation or consultation in accordance with the applicable rule of law. ADR aims to allow the parties involved to reach an agreement on the form and magnitude of compensation or the next steps so that no more losses occur. The last legal step, if the act has a criminal element, then it can report to the authorities, namely the police for processing, in this case the case of fraud in accordance with article 378 of the Criminal Code. With legal efforts, awareness and knowledge is needed for consumers / users of electronic systems of their own rights and obligations. With a high level of awareness, the purpose of protection for consumers can be achieved. With the help of the government and consumer protection agencies, it is expected to continue to disseminate information about consumer rights and obligations so that consumer awareness can be increased and the government and agencies can achieve the goal of protecting consumers from various losses. These legal efforts are a form of legal protection from the state which is essentially the right of all communities to obtain legal protection. In accordance with the Theory used, that legal protection for every citizen is a form of recognition of the dignity and dignity of every citizen as a human being.

4. CONCLUSION

1. Buying and selling activities that occur on the social media platform Instagram can be said to be juridically incorrect. The purpose of Instagram's own social media platform is to socialize between people with others. Therefore, the aspect of legal protection for consumers or users of electronic systems is very weak. The rule of law regarding the responsibility of platform providers can be said not to cover all issues that can occur on platforms, especially issues regarding consumer protection. In the ITE Law, platform providers are only responsible for their electronic systems in order to operate reliably and safely. According to Dinda Audriene's case, she was tricked into buying women's clothes that she saw in an Instagram ad. More specific rules are needed regarding the responsibility for platform providers so that platform providers can update their electronic systems to be more secure when used for transactions, especially the social media platform Instagram.
2. Legal efforts can be made if consumers or users of electronic systems are aware of their rights and report losses suffered by them to the authorized institutions to resolve consumer problems. In the case discussed, in accordance with article 45 UUPK Dinda Audriene as a consumer can make a lawsuit to online shop businesses because when after doing a trade transaction, the goods purchased never arrive, automatically consumers are harmed. Dinda Audrine can also sue the electronic system operator because as an advertising service provider in accordance with article 38 and article 39 of the ITE Law.

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