

Legal Protection of Consumers by National Consumer Protection Agency (BPKN) in the Event of Discrepancies in Goods Promised in Online Buying and Selling Transactions and The Direction of Legal Regulation of Consumer Protection in The Digital Era in Indonesia

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Abstract

Development of business law is currently growing very swiftly. Besides the development of technology in addition to superior and the law must follow the development of the era. In Indonesia began to develop the phrases of an act known as the sale and purchase transactions online (e-commerce) It's miles possible that it'll supply upward push to a legal problem. In conjunction with client protection laws in Indonesia, has been set in law No.8 of 1999 concerning consumer protection. E-commerce transactions offer convenience for the client inside the sport of selling or buying of goods and offers in step with the

client needs at the time. In this article we are able to talk about how consumer protection in e-commerce transactions in brief and the way to modify legal policies in Indonesia relevant consumer protection laws as a way for the resolution of legal issues related to consumers and businesses.

Keywords: Consumer, Consumer Protection Law, E-commerce

1. INTRODUCTION

The Internet has brought the world economy to a new chapter or better known as digital economy. The era of the digital economy is characterized by the increasing use of the internet as a communication medium for economic activities. For example, commerce increasingly relies on electronic commerce (e-commerce) as a transaction medium. Electronic Commerce (E-commerce) is a business activity that involves the use of computer networks

by consumers, manufacturers, service providers and intermediaries [1]. With the advancement of information technology, the influence of internet presence on consumers on one hand has changed consumer behavior to become increasingly critical and wary in determining the products they will choose. For manufacturers, these advances bring about a positive impact on improving product marketing, resulting in cost and time savings. Commerce based on advanced technology, *e-commerce* has reformed traditional business models,

the interactions between consumers and companies, which traditionally is direct, is now an indirect interaction. E-commerce has changed traditional business models by increasing patterns of interaction between producers and consumers in the cyberspace. The transaction system used in *e-commerce* is designed for electronic signatures. Electronic signatures are designed from the moment of purchase, inspection and delivery.

In 1962, the President of the United States J.F. Kennedy in his speech in front of *the Congress on Protecting the Consumers Interest* put forward 4 (four) consumer rights, namely : the right of safety, the right to be informed, the right to choose and the right to be heard [2]. However, the consumer's voice is usually not heard. It is common for consumers to not have protection, they often are disadvantaged because the quality of goods and services received is different from that promised.

Basically Indonesian consumers are the entire Indonesian population. Therefore, the interest in a legal protection for consumers is the interest of all segments of Indonesian society [3]. In legislation in Indonesia, the term "consumer" as a formal juridical definition is found in Law Number 8 of 1999 concerning Consumer Protection. Consumer is every person who uses Goods and/or Services available in the community, both for the benefit of themselves, family, others, and other living thing and it is permissible to be used commercially. Meanwhile, the term for business actors according to Article 1 number 3 (three) of Law Number 8 of 1999 concerning Consumer Protection, namely any individual or business entity, whether it is in the form of a legal entity or not, a legal entity established and domiciled in the legal territory of the Republic of Indonesia, either alone or together through agreements to conduct business activities in various economic fields.

With the existence of the Consumer Protection Law, it is hoped that consumers in Indonesia can be more active in defending their rights that have been violated. Then the law that regulates E-Commerce is Government Regulation of the Republic of Indonesia Number 80 of 2019 concerning Trading Through Electronic Systems. This regulation aims to provide legal protection and legal certainty related to the implementation of electronic systems and transactions.

As the internet media enters the trading/business world, many things have been altered, such as the relations between the parties of the transaction that became increasingly vulnerable as each party does not really know each other (can only be identified by computers), uncertainty about the goods offered, especially if the goods provide goods that require physical identification (e.g. perfume and drugs), guaranteeing the goods delivered are the same as those ordered, even though we know the relationship arising between the consumer and the business actor always aims to benefit both parties. Such conditions often occur in every transaction on the internet. However, the Consumer Protection Law that is now in force in Indonesia is still based on something that is physical, and not yet virtual. Electronic Commerce is formed from various sub-systems that are systematically arranged, with each sub-system having its own issues.

In an agreement that adheres to several principles such as, the principle of freedom of contract, namely that everyone can enter into any agreement, both those that have been stipulated in the law, and those that have not been regulated in the law, then there is the principle of consensualism, namely the principle that the agreement is generally not held formally, but is sufficient with the agreement of both parties. Then it is needed to adhere to the principle of good faith, namely that both parties must carry out the substance of the contract based on trust or firm belief and the good will of the parties.

Incorrectly received goods that differs from the agreement between buyer and seller is a phenomenon that often occurs in Indonesian online shopping. Many consumers after receiving an order item purchased on an online shopping website find that the item received does not match what was ordered. As what happened to Danis Darusman or Danis. Danis ordered a new iPhone 6 Plus on the website Lazada, but what he received was a bar of bath soap. To substantiate his claim, the consumer perpetuates the process of opening the package and disseminates it on his social media account. Danis also tried to contact Lazada, but did not get a response from the manufacturer [4].

The issue of consumer protection in e-commerce still needs to be examined more deeply. Consumer rights that are neglected by businesses need to be examined carefully. In the current era of

globalization and free trade, many different types of goods/services are emerging that are marketed to consumers, either through promotions, advertisements, or offers directly. If consumers are not careful in choosing the desired products/goods/services, consumers will only be the object of exploitation from irresponsible business actors.

The main factor that contributes to the perpetual disadvantage that the consumers are experiencing is the lack of awareness they possess. This is mainly due to the low level of Consumer education. Therefore, the Consumer Protection Law is intended to be a strong legal basis for the Central Government, Local Government, and non-governmental Consumer Protection institutions to make efforts to empower consumers through guiding and educating consumers. To overcome the conditions above, it is necessary to empower consumers through the establishment of laws that regulate government duties, the obligations of Goods Business Actors and/or Service Providers to protect consumers comprehensively that can be effectively applied in the community.

Often times Indonesian consumers get goods that are not in accordance with what has been promised. To solve and prevent problems like that from recurring again, in Indonesia there is an institution called the National Consumer Protection Agency (BPKN). As in Article 31 of the Consumer Protection Law, the BPKN is formed to develop consumer protection efforts. The role of the BPKN is very important in supervising the protection of consumer rights in consuming or buying an item offered or sold by a business actor. No less important is the Legislation on consumer protection. Law Number 8 of 1999 is no longer relevant in the digital era today and it should be renewed.

Based on the description of the preliminary in the paragraph above, there is a problem formulation in this study, namely: (1) How is the efforts of the BPKN in carrying out protection, action, and law enforcement for consumers who received discrepancies in goods in transactions carried out online? and (2) What is the direction of legal regulation of consumer protection in the digital age in Indonesia?

2. METHODOLOGY

To answer these two problem formulations, the author uses normative juridical research methods with a statute approach and a comparative approach as support, which is carried out by research in the form of literature studies. The statutory approach is carried out in an effort to examine the legislation in the field of consumer protection, in its hierarchical perspective [5]. This review is based on the functions of each legislation, so that the level of compatibility can be viewed with better clarity. Then, the comparative approach was carried out by looking at how each regulatory system regarding consumer protection in several other countries, to then be associated, with the example of consumer protection law in Indonesia based on Law Number 8 of 1999 concerning Consumer Protection.

3. RESULT & DISCUSSION

3.1 Legal Review in Consumer Protection of Online Trading Transactions in Indonesia

Online Trading Transactions is also called E-commerce. E-commerce is a dynamic set of technologies, applications, and business processes that connect companies, consumers, and communities through electronic transactions in the form of trade in services and information on electronic media [6]. From the development of buying and selling and their forms of marketing, we now recognize the term online store. The definition of online shop is the process of buying goods or services from people on the internet. This new form of buying and selling has many positive values, including the ease of trading. Online shops often offer goods by mentioning product specifications, prices, and pictures of the goods. The buyer chooses and then orders the goods that are usually delivered after the buyer transfers the money [7].

In Indonesia, the consumer protection movement began with the establishment of the Indonesian Consumer Protection Foundation (YLKI) on 11 May 1973, which was widely regarded as a pioneer of consumer advocacy in Indonesia. After YLKI, several similar organizations emerged, among them the Institute for Consumer Development and Protection (LP2K) in Semarang which was established in February 1988 and joined as a member of Consumers International (CI) in 1990. Parliamentary discussion on the

Consumer Protection Act began from December 1998 to 30 March 1999. The process of drafting consumer protection laws consisting of 15 chapters and 65 articles turned out to take no less than 25 (twenty five) years from the initial idea of the law was summarized (1975-2000). It is inconceivable that, as man-made works do, several things are incomplete or insufficiently made for this Law (henceforth, it is the task of the National Consumer Protection Agency) [8]. Regarding the BPKN regulated in Articles 31 to 43 of Law No. 8 of 1999 concerning Consumer Protection and Government Regulation No. 4 of 2019 concerning the National Consumer Protection Agency. BPKN is a body established to assist efforts to develop consumer protection. The arrangement of the tasks of the National Consumer Protection Agency (BPKN) which has many similarities with the objectives of YLKI, in accordance with the expectations expressed by the World Consumer Congress in San Diego. Sudaryatmo claims that the role of consumer institutions in a country is important in providing protection to consumers. Equally important to the role of consumer agencies is the role of consumer agencies in advancing consumer access to justice, which was briefly raised at the World Consumer Congress in San Diego [9].

According to Az Nasution, there is a difference between consumer law and consumer protection law. Consumer law is all the principles and rules that regulate relationships and problems to provide for the use of products (goods and/or services) between providers and users in community life. However, consumer protection law is the whole set of principles and rules that regulate and protect consumers in tandem with supply issues and use of consumables (goods and/or services) between the Provider and the user within the community [10].

Consumer protection is the practice of protecting buyers of goods and services as well as the public from unfair practices in the market. Consumer protection measures are usually prescribed by law. These laws are designed to prevent businesses from committing fraudulent or unfair practices to gain advantage from competitors or to mislead consumers. They can also provide additional protection to members of the public who may be affected by the product (or its production), even if they are not direct buyers or consumers of the product. For example, government regulations may

require companies to disclose detailed information about their products, especially in areas involving public health or safety, such as food or cars [11].

The notion of consumers between countries are different, for example in Spain, consumers are defined not only as individuals (people), but also companies that is the buyer or the last user. And interestingly, consumers do not have to be bound in a buying and selling relationship, so that in itself consumers are not identical to buyers.

3.2 BPKN's Efforts in Providing Legal Protection for Consumers on Goods Discrepancies in Transactions Performed Online

The Consumer Protection Law explained that there are 4 (four) components of consumer protection guards and law enforcement in Indonesia, namely the government, National Consumer Protection Agency (BPKN), The Consumer Dispute Resolution Agency (BPSK) and The Self-Help Consumer Protection Institution (LPKSM). National Consumer Protection Agency (BPKN) consists of 15 to 25 members who represent the : (1) Government, (2) Business Actors, (3) Non-Governmental Consumer Protection Institutions, (4) Academics, (5) Experts. Their term of office is three years and may be reappointed for one subsequent term. Establishment of the BPKN based on the provisions of Law No. 8 of 1999 concerning Consumer Protection which was followed up by Government Regulation No. 4 of 2019 concerning the Duties, Functions and Membership of the BPKN. In order to protect consumers, in accordance with Article 3 paragraph (2) the National Consumer Protection Agency shall do the following:

- 1) Providing advice and recommendations to the government in the advent of preparing policy in the field of consumer protection;
- 2) Conducting research and assessments of applicable laws and regulations in the field of consumer protection;
- 3) Conducting research on goods and/or services that concerns consumer safety;
- 4) Encourage the development of non-governmental consumer protection institutions;
- 5) Disseminating information through the media regarding consumer protection and communicating bias to consumers;

- 6) Receive feedback about consumer protection from the public, non-governmental consumer protection agencies, or business actors;

According to the consumer protection law, if consumers feel deceived by the products offered by the seller, consumers can report it to the Consumer Dispute Resolution Agency (BPSK) based in the cities/districts of Indonesia. Consumers can receive compensation of up to Rp 200 million if the claim is proven. In addition, National Consumer Protection Agency (BPKN), an institution directly established by the state, will act as a facilitator for consumers to take action if they are not satisfied with the seller, the BPKN also provides advice and recommendations to the government to reformulate regulations on matters that have not been regulated for the benefit of consumers.

Subject to the provisions of Article 45 of the Consumer Protection Law, consumers may sue business actors through the The Consumer Dispute Resolution Agency (BPSK) or straight to the court. According to the provisions of Article 47 of the Consumer Rights Protection Law, an agreement was reached on the form and amount of compensation, or on certain actions to ensure that no further loss is suffered by consumers or that it will not occur again. The body that resolves consumer disputes out-of-court is the Consumer Dispute Resolution Agency (BPSK) which is authorized to handle and resolve consumer disputes through mediation or arbitration or conciliation according to Article 52 of the Consumer Protection Law. The results of Mediation, Conciliation, and Arbitration from the BPSK will be regulated in the final and binding decision of BPSK, as stipulated in Article 54 of the Consumer Protection Law, where the parties can, in accordance with the provisions of Article 56, appeal to BPSK with the District Court Decision on objection to the decision of the Consumer Protection Law within a maximum period of 14 days from the receiving of the relevant notification [12].

As a preventive effort to prevent the same case from happening again or any occurrence from any further cases, the BPKN must guide the consumers so that they know their rights as consumers and encourage business actors to do business in a healthy manner as stated in Article 29 paragraph (1) of the Consumer Protection Law. In addition, the Government in this case BPKN is expected to make regulations that can

be the legal basis of consumer protection in digital transactions. For example, in the case of digital buying and selling, where the buyer receives goods that are not in accordance with what the seller has promised, causing losses to the buyer. Even though the seller gives a warranty for the exchange of goods, losses still occur on the part of the buyer considering that in some cases, the cost of shipping and exchanging goods is still charged to the buyer.

3.3 Form of Business Actors' Liability for Nonconformity of Goods Received by Consumers

Responsibility arises when a person performs an act that causes an impact/consequence. Business actors who deliver goods that are not in accordance with the picture provided can be claimed to commit acts of default (Article 1243 of the Civil Code), since business actors do not fulfill their obligations in electronic contracts so as to cause losses to consumers. On this basis, business actors are obliged to fulfill their performance in the sale and purchase agreement by sending goods in accordance with the agreement on the marketplace [13]. In buying and selling, online sellers (merchants) on the marketplace are obliged to fulfill all obligations in Law Number 8 of 1999 concerning Consumer Protection. The obligations of business actors are contained in Article 7 of Law Number 8 of 1999 as follows:

- a. Implementation of its business activities in good faith
- b. Provide true, clear and honest information of the conditions and guarantees of goods and/or services and provide explanations of use, repair, maintenance
- c. Treating or serving consumers fairly and honestly without discrimination;
- d. Guaranteeing the quality of goods and/or services produced and/or traded based on the provisions of the applicable quality standards of goods and/or services;
- e. Provide opportunities for consumers to test, and/or try certain goods and/or services and provide guarantees and/or warranties for goods made and/or traded;
- f. Compensate, indemnify and/or reimburse for losses due to the use, utilization of traded goods and/or services;
- g. Compensate, indemnify and/or reimburse if the goods and/or services received or

utilized are not in accordance with the agreement.

The legal basis that regulates electronic commerce specifically itself is found in Government Regulation Number 80 of 2019 concerning Commerce Through Electronic Systems. Article 26 letter a of Government Regulation Number 80 of 2019 concerning Commerce Through Electronic Systems elaborates that Business Actors are obliged to protect the rights of consumers in accordance with the provisions of laws and regulations in the field of consumer protection. Then the obligations of business actors are regulated in Article 13 Paragraph (1) Government Regulation Number 80 of 2019 concerning Trading Through Electronic Systems, namely:

- a. Provide true, clear, and truthful information about the identity of the legal subject
- b. Supported with valid data or documents;
- c. Submit true, clear, and honest information regarding the conditions and guarantees for the Goods and/or Services traded including the Electronic System used according to the characteristics of their functions and roles in the transaction; and
- d. Meet the requirements of advertising ethics in accordance with statutory provisions.

In accordance with Correct, clear, and honest information based on Article 13 Paragraph (2) of Government Regulation Number 80 of 2019 concerning Commerce Through Electronic Systems as referred to in paragraph (1) letter a and letter b above shall at least provide information regarding:

- a. truth and accuracy of information;
- b. correspondence between advertising and physical information of the Goods;
- c. Eligibility for consumption of Goods or Services;
- d. Legality of Goods or Services; and Quality, price, and accessibility of Goods or Services.

In Article 7 (b) of the Consumer Protection Law, it has been elaborated that business actors are required to provide true, clear, and honest information about the condition and guarantees of goods, so that if the trade actor delivers goods that are not in accordance with what has been promised, it is considered a violation to its obligations Then, according to

Article 7 (f) of the Consumer Protection Law, due to the delivery of goods in e-commerce transactions that are not in accordance with what has been agreed, it is the responsibility of business actors, business actors must compensate, and/or reimburse for losses due to the use, use and utilization of the goods and/or the traded services. Business actors are also required to provide compensation if the goods or services cause damage, pollution, and/or loss to consumers as stipulated in Article 19 paragraph (1) of the Consumer Protection Law. Thus, business actors are responsible for all losses incurred by consumers, because the liability is not only limited to defective products.

The form of compensation made by business actors can be in the form of return or exchange of items with the same or equal value, or medical treatment in the form of compensation for the delivery of goods that are not in accordance with Article 19 paragraph (2) of the Consumer Protection Law and/or compensation in accordance with applicable laws and regulations. The Consumer Protection Law itself regulates the compensation period, which is within 7 (seven) days from the date of the transaction. In addition, Article 19 paragraph (4) of the Consumer Protection Law explains that the provision of compensation does not eliminate the possibility of criminal prosecution based on further evidence containing elements of error. The provisions of Article 19 of this Law are then developed in Article 23 of the Law which reads: "Business actors who refuse and/or respond and/or do not meet compensation for consumer demands as referred to in Article 19 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), consumers can sue through consumer dispute resolution institutions or file a lawsuit with a judicial institution in the place of consumer position."

Furthermore, Article 69 Paragraph (2) letter a of Government Regulation Number 80 of 2019 concerning Trade Through Electronic Systems consumers can exchange or cancel the purchase of an item if there is an error and/or discrepancy between the Goods and/or Services delivered. The cost of shipping the goods can be charged to the consumer if the consumer is involved in causing an error and the cost incurred is the cost of shipping the goods as described in Article 69 Paragraphs (3) and (4) of Government Regulation Number 80 of 2019 concerning Trading Through Electronic Systems.

The Indonesian product liability system adheres to the principle of fault-based responsibility with reversed evidence but has not carried out its absolute responsibility. Considering Article 19 paragraph (1) of the Criminal Procedure Law holds on to the principle of presumption of guilt, based on the difference in its formula and Article 1365 of the Criminal Procedure Code, namely: (i) Article 1365 of the Criminal Procedure Code explains the basis of liability arising from one's mistake or negligence, Article 19 paragraph (1) does not contain the word "error". In this case, Article 19 of the Consumer Protection Law states that liability occurs when the producer (business actor) suffers losses due to the consumption of the traded product. (ii) The conditions that are not mentioned in Article 1365 of the Civil Code are the payment terms, while Article 19 of the Consumer Protection Law regulates the payment terms of 7 (seven) days.

The second idea contained in Article 23 of the Consumer Protection Law is the idea of producers compensation that is not paid within the specified period. The manner of This producer provides an opportunity for consumers to file a lawsuit with the court or through a consumer dispute resolution body. Article 23 states that the principle of responsibility which is also contained in the Consumer Protection Law is the principle of presumption of responsibility. This principle is a modification of the principle of liability based on error, with the burden of proof reversed. However, it does not fully conform to the principle of absolute responsibility which is expressly enshrined in some laws of other countries.

3.4 Direction of Legal Regulation of Consumer Protection in Indonesia in the Digital Age

The Consumer Protection Law was born long before digitization, so it has not been fully able to guarantee the rights of consumers in digital business. The government is unresponsive in keeping with technological changes and developments, this can be seen by the absence of changes to the Consumer Protection Law that has existed since 1999, long before the advent of digitalization so that the Consumer Protection Law has not technically regulated provisions related to consumer protection in conducting digital purchase or selling, nor have other regulations been technically regulated related to consumer protection when conducting

transactions using digital media [14]. Inversely compared to Singapore, which has a Casetrust accreditation scheme that has been in operation since 1999. Casetrust is used to spearhead growth in the quality of business activity and fair trading practices. In addition, this scheme can also create mutual trust between consumers and business actors. This will result in a significant business transaction process between them that is underpinned by moral authority, is reasonable and is mutually beneficial. Casetrust also plays an important role in protecting e-commerce consumers from potential purchases of defective goods and information that is not in accordance with the condition of the goods or services they receive. It is clear that the accreditation scheme organised by Casetrust contains a number of objects of protection such as: (i) Protection against defective products; (ii) Protection from remote sales; (iii) preventing misuse of computers; (iv) preventing misuse of data Information.

The Consumer Protection Law and the civil code are regulations that existed long before the rapid evolution of technology and digitization. So that today, when digital business is being normalized within society, the Consumer Protection Law and the Civil Code have many shortcomings in compensating for new problems that have not been regulated before. Virtual transactions that occur in online buying and selling use banks as payment intermediaries, considering that sellers and buyers may be based at different locations this is so that sellers and buyers do not have to face each other directly [15]. Nevertheless, there is a legal relationship that occurs between the seller and the buyer as a result of the sale and purchase process, so that regulations can be implemented related to the sale and purchase as specified in Articles 1474 to 1540 of the Civil Code. The Legal protection for consumers of electronic financial services, or commonly known fintechs, also needs more attention. OJK is an institution that has the authority to regulate fintech companies. This arrangement is guided by OJK Regulation No. 77/POJK/01/2016 concerning Information Technology-Based Borrowing and Borrowing Services, but the Regulation still has many shortcomings in terms of adjusting to various forms of problems related to the activities of the fintech company, so a more vast regulatory access is needed which can be used as a guideline for OJK to supervise fintech companies

and be able to compensate for the problems of fintech implementation that are quite complex [16].

The description above is a description of the future Consumer Protection arrangements in Indonesia in the digital era. As a legal state, any form of conduct, including business conduct in the digital age, must comply with laws and regulations. Indonesia already has regulations that can be used to protect the rights of consumers and business actors, but the regulation was formulated long before digitization, so it has not been able to keep up with the pace of the ever evolving digital society. The consumer protection law has not been updated, causing the complexity of law enforcement by consumers and business actors who are disadvantaged.

4. CONCLUSION

Based on the description of the discussion in the previous section, it can be seen that Consumer Protection for non-conformity of the promised goods can be reported to the The Consumer Dispute Resolution Agency (BPSK). The government in an effort to protect consumers established the National Consumer Protection Agency (BPKN). The BPKN will act as a consumer facilitator to take protective measures for consumers who feel disadvantaged by producers/business actors. The responsibility of business actors who deliver goods that are not in accordance with what has been promised is in the form of fulfilling the rights of violated consumers by being obliged to compensate, compensate and/or reimburse for losses due to the use, use and utilization of the goods and/or services traded.

To provide good legal protection for consumers in this digital era, the Government needs to update Law

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Number 8 of 1999. This update is done so that the Law becomes relevant in the current era of e-commerce transactions. The government is also, in the advent of maintaining Law Number 8 of 1999 which is still valid, is necessitating the socialization of consumer rights that are protected by laws and regulations in Indonesia so that in the future the public is more understanding and aware of fraud over the purchase of goods that they do through e-commerce, it is also necessary to socialize to sellers in e-commerce that there are obligations that they must carry out and so that they understand that all transactions or aberrant activities that the seller carries out will be accounted for legally.

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