

Consumer Protection Against Inappropriate Online Goods Purchases Reviewed From The Civil Code and Consumer Protection Law

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ABSTRACT

Online buying and selling transactions are carried out by some Indonesian people through e-commerce platform which are a technological development. Online purchasing transactions are carried out to save time and make things easier for buyers. However, there is a phenomenon in online purchases in the form of consumer complaints regarding dissatisfaction with the goods purchased which do not match the information provided by the seller. The identification of the research problem is how consumer law is protected in the civil code and consumer protection law and the responsibility of business actors for consumer losses. The aim of the research is to determine consumer legal protection and the responsibilities of business actors towards consumers. The research uses normative juridical research, a statutory regulation approach and is analysed qualitatively. Consumer protection is regulated in the civil code and consumer protection law number 8 of 1999 which regulates the protection and replacement of goods if the goods received by the consumer do not conform to what was agreed in the sale and purchase transaction. The responsibility of business actors for consumer losses is to provide compensation for damage, replacement of goods and/or refunds.

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1. Introduction

E-commerce is an electronic buying and selling transaction through internet media. E-commerce has become an inseparable part of daily life. E-commerce first appeared in Indonesia in the 1990s, when the internet began to be known in the community. But at that time, its use was still small. But over time, e-commerce continues to grow rapidly in tandem with the increase in internet users in Indonesia. Until now, e-commerce in Indonesia has been very advanced, with many local and international e-commerce platforms present and competing fiercely to attract buyers. The development of this technology has made the online shopping process from payment to delivery of goods easier. The development of internet information

technology has had a positive impact on the people of Indonesia. This makes the Indonesian people inseparable from increasingly modern technological developments. The existence and changes in internet technology have changed the lifestyle of traditional Indonesian people into a modern society. The presence of e-commerce makes it easier for internet users to buy and sell transactions without having to come directly to the store and can save consumer time (Ikhsan, 2022).

Trade based on e-commerce technology has reformed conventional trade where the interaction between consumers and business actors that was previously carried out directly became indirect interaction. E-commerce has changed the paradigm of classic business by fostering models of interaction between producers and consumers in the virtual world (Mansur, 2005).

The presence of e-commerce applications that are currently increasingly in demand by internet users are shopee and tiktok shop. Tiktok shop and shopee are e-commerce that are often used by internet users because they highlight each of the advantages that cause many internet users to use the two applications, so that there is business competition between the two. The more advanced internet technology in business practices, the fiercer competition for businesses. Shopee and tiktok shop compete in providing customer service with offer of discount claims and free shipping that attract consumers with different discounts.

This very tight competition has made several business actors legalize various ways where business actors are also charged e-commerce administration fees which are increasing where selling prices are competitive. So that in attracting consumers to buy their products, business actors make advertisements and product descriptions and a very convincing purchasing system. However, the reality is that there are hidden conditions for purchasing goods, there are some items that do not match the advertisement and description of the store and the goods sold are only available in a few units. This is a fraud by business actors in offering their products to make a profit. For example, the product sold when it arrives in the hands of the consumer does not match the advertisement or with the description of the goods in the store, the second item ordered from the store when it arrives is different from the one ordered, the goods ordered to the buyer's destination are damaged. There are many more unpleasant incidents in online purchases. This is detrimental to the buyer as a consumer. Where it violates the legal provisions of the Consumer Protection Law. In the Consumer Protection Law in article 1 number 1 which states that: "Consumer protection is all efforts that ensure legal certainty to provide protection to consumers".

Legal certainty in providing protection to consumers is formed because of the relationship between buying and selling transactions between business actors and consumers. Where in the trading system through e-commerce, it is designed to sign electronically. This electronic signature is designed starting from the moment of purchase, inspection and delivery. Electronic signing is a buying and selling transaction that is carried out online (Siregar, 2024). Online buying and selling transactions are legally the birth of an agreement between the seller and the buyer in which the rights and obligations are carried out online. In the Civil Code Article 1313 which reads "an agreement is an act where one or more persons bind themselves to one or more other persons".

With the weak position of consumers, it is often used by business actors to obtain the maximum profit from consumers. Factors such as consumer ignorance, unclear information about goods/services provided by business actors, and consumers' lack of understanding of the transaction mechanism are factors that cause the weak position of consumers which results in the position of business actors and consumers becoming unbalanced and consumers in a weak position.

Therefore, in order to create a healthy business climate for consumers in conducting trade transactions through e-commerce, it is necessary to seek a form of legal protection for consumers in the purchase of online goods that are not in accordance with the Civil Code and the Consumer Protection Law No. 8 of 1999 concerning Consumer Protection and How Business Actors Responsibility to Consumers for Losses in the Purchase of Non-Compliant Goods online. The purpose of this study is to find out the form of legal protection for consumers in the Civil Law and the Consumer Protection Law No. 8 of 1999 concerning Consumer Protection and to find out the form of responsibility of business actors for losses experienced by consumers.

2. Method

This research method uses normative juridical research using a legal approach which is then associated with legal theories, legal rules, and legal facts in society (Marzuki, 2011). This research approach is directed to the Civil Code and the Consumer Protection Law No. 8 of 1999.

The data collection technique is carried out by library research which aims to obtain concepts, theories, and opinions of legal experts related to the subject matter of this research. The implementation of data collection is by collecting secondary data in the form of primary legal materials, secondary legal materials and tertiary legal materials (Ali, 2010). Primary legal materials are legal materials that are binding from the perspective of laws and regulations in the form of laws and regulations regarding consumer protection and civil agreements between the parties between sellers and consumers with materials in the form of the Civil Code, Consumer Protection Law No. 8 of 1999 and Law No. 11 of 2008 concerning Information and Electronic Transactions. Secondary legal materials are materials that provide an explanation of the primary legal materials above, such as books related to consumer protection laws and sales agreements; seminar results; scientific journals, magazines, newspapers, even personal documents or opinions from legal experts as long as they are relevant to the object of this research. Tertiary legal materials are data materials that provide clues and more in-depth explanations of primary and secondary data materials. Tertiary data materials used in this study such as dictionaries, encyclopedias and so on.

This research is carried out data analysis with a qualitative analysis approach, as the data needed is not in the form of numbers, this study analyzes the data by providing a verbal description of the findings that prioritize the quality and quality of the data collected. The analysis of this research is carried out by collecting primary and secondary data and analyzed in depth with legal theories that will be related to laws and regulations based on facts and phenomena in consumers.

3. Analysis and Results

3.1. Consumer Legal Protection Against Online Purchases of Goods That Are Not in Accordance with the Civil Code and Consumer Protection Law No. 8 of 1999 concerning Consumer Protection

E-commerce transactions provide speed, convenience, and practicality of transactions for the community, which is an added value for consumers. But on the other hand, consumer rights are still often ignored by business actors. Because, many consumers are not aware of their own rights because there is little or even no information about consumer rights, causing consumers to be in a weak position and vulnerable to seller deception. Thus, legal protection is an important aspect of e-commerce activities (Amalia, 2021).

Consumer protection is an important part of this legal protection. According to AZ Nasution, consumer legal protection is a special part of consumer law, namely the entire principles and rules that govern and protect consumers and the relationship and problems of the provision and use of consumer products (goods and/or services) between providers and their users, in social life (Zulham, 2013).

Consumers are often the object of losses in these transactions, such as when products arrive that are not in accordance with what was ordered, delays in product receipt, and products ordered by consumers are not delivered. Fraudulent business actors like this are often called defaults. Cases of default carried out by business actors often appear in e-commerce because online buying and selling does not include direct meetings between a number of parties.

Defaults can be categorized according to several forms. Subekti stated that there are four (4) types of default, namely not carrying out what he is promised to do, carrying out what he promised but not as promised, carrying out what was promised but being late, doing something that according to the agreement is not allowed (Subekti, 2005).

Where with the number of business actors and people who use electronic media in conducting electronic transactions, it results in legal consequences due to the birth of agreements between business actors and consumers. In Article 1320 of the Civil Code (Indonesia, n.d.), the validity of a contract is determined by subjective and objective criteria. The subjective criteria are (1) approval or agreement; (2) the competence of the parties to the contract, while the objective criteria are (1) a certain thing; (2) a cause that is halal. Both criteria must be met in order for the transaction contract to be valid. The skills of business people and consumers can determine the effectiveness of activities in e-commerce. If the e-commerce activity is not carried out directly, the legal skills are difficult to determine, if the inability of the parties to the transaction can be known before the transaction, then the agreement can be terminated (Soesi & Aryani, 2019).

Therefore, Consumer protection in terms of Civil Law, if in an agreement that is valid according to the law, of course, the parties who bind themselves are obliged to pay attention to Article 1320 of the Civil Code (Civil Code). If the agreement that has been made is not lived up to by the agreement that has been agreed upon by one of the parties, the act can be said to be in default. Default can occur intentionally or unintentionally. Parties who accidentally commit this default can occur because they are not able to fulfill the achievement or also because they are forced not to do the achievement. Where in the validity of a contract in an e-commerce transaction if the terms of the contract have been successfully fulfilled by the parties, then the agreement of the parties involved is important in determining the validity of a contract. The achievement of a transaction approval related to information offered through an electronic system. If the contract is not fulfilled, the agreement can be terminated where the business actor is responsible for consumer losses (Santoso, 2024).

The standard terms used in e-commerce transactions are also governed by a number of laws and regulations. Article 8 of the UUPK (Indonesia, 1999) regulates the purpose of prohibiting the use of standard terms. Article 8 of the UUPK explains that the use of standard terms in terms of freedom of contract causes status inequality between consumers and business actors, and the article also emphasizes the obligation of business actors to protect their consumer rights when transacting (Kristianty, 2022).

Traditionally, a contract takes place based on the principle of freedom of contract between two parties who have a balanced position. The two parties seek to reach the agreement necessary for the contract to take place through a negotiation between them, but the tendency is to show that many contracts in business transactions are not through a balanced negotiation

process between the parties, but in such a way that one party has prepared the standard terms on a printed contract form and then presented to the other party for the purpose of agreed by giving almost no freedom at all to the other party to negotiate on the terms offered. Such a contract is called a standard contract or a standard contract or an adhesion contract (Alifiona, 2023).

In the Consumer Protection Law, Consumer Protection is regulated in Article 1 paragraph (1) of Law No. 8 of 1999 concerning Consumer Protection which reads: "Consumer protection is all efforts that ensure legal certainty to provide protection to consumers".

Consumer protection has a scope that can be differentiated in two aspects, namely: (Endipradja, 2016): (a) Protection against the possibility that goods delivered to consumers are not in accordance with what has been agreed; (b) Protection against the imposition of unfair conditions to consumers.

Article 4 of the UUPK explains that consumer rights when transacting online are often ignored by business people. Consumer rights on e-commerce transactions have been regulated in the UUPK. This means that consumers can demand their rights against business actors if there is a violation of the agreement in the transaction. The lack of consumer knowledge and awareness in e-commerce transactions often puts consumers in a passive position. This can have implications for fraudulent behavior by business actors in transactions. E-commerce business participants usually choose a standard buying and selling transaction model to make transactions. Standard requirements also make it difficult for consumers to cancel transactions when they are found to be in default. Based on Article 4 of the Consumer Protection Law, consumer rights include: (a) the right to choose goods and/or services and obtain such goods and/or services in accordance with the exchange rate and the conditions and guarantees promised; (b) the right to true, clear, and truthful information regarding the condition and guarantee of goods and/or services; (c) The right to appropriate advocacy, protection and dispute resolution efforts with consumer protection; (d) The right to be treated or served correctly and honestly and non-discriminatory; (e) the right to compensation, compensation and/or reimbursement, if the goods and/or services received are not in accordance with the agreement or are not as they should be; and others.

In addition, in terms of consumer rights, there are obligations of business actors to protect consumers from default regulated in Article 7 of the UUPK, namely: (a) in good faith in carrying out its business activities; (b) provide true, clear and truthful information regarding the condition and warranty of goods and/or services and provide explanations of use, repair and maintenance; (c) treat or serve consumers correctly and honestly and without discrimination; (d) ensuring 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 guarantees for goods made and/or traded; (f) compensate, indemnify and/or reimburse for losses due to the use, use and utilization of goods and/or services traded; (g) provide compensation, compensation and/or reimbursement if the goods and/or services received or utilized are not in accordance with the agreement.

Legal protection to consumers against non-compliant goods is the right of consumers to obtain information (The Right to be informed) where every product introduced to consumers must be accompanied by correct information either orally, through advertisements in various media or listed in the product packaging (goods) (Putra, 2017). The goal is so that consumers do not get wrong views and images of goods and services.

More strictly in Article 8 of the UUPK prohibits business actors from trading goods/services that are not in accordance with the promises stated in the labels, etiquette,

descriptions, advertisements or sales promotion of these goods and/or services. Based on this article, the inconsistency of the specifications of the goods, you receive with the goods listed in the advertisement/photo of the goods offering is a form of violation/prohibition for business actors in trading goods (Molle et al., 2023). Therefore, consumers in accordance with Article 4 letter h of the UUPK are entitled to compensation, compensation and/or reimbursement if the goods and/or services received are not in accordance with the agreement or are not as they should be. Meanwhile, the business actors themselves in accordance with Article 7 letter g of the PK Law are obliged to provide compensation, compensation and/or reimbursement if the goods and/or services received or utilized are not in accordance with the agreement (Konsumen, 1999).

In online buying and selling agreements regarding UUPK based on the type of legal protection provided to consumers, including (Yanti, 2022): (a) The protection provided by the Law, namely the legal protection provided by the ITE Law, Consumer protection by stipulating the rights and obligations of business actors and consumers, and the responsibilities of business actors related to losses obtained by their consumers; (b) Legal protection according to the agreement formed, namely protection from the provider of online trading applications related to the personal information of its consumers and compensation for any losses experienced by its consumers

Based on the above findings, based on a survey by the Consumer Protection Agency, the total number of consumer complaints in the last three years is around 1591 complaints, of which in 2022 the number of complaints is 1906, in 2023 the number of complaints is 191, and in 2024 the number of consumer complaints is 304. This means that in 2022 the number of consumer complaints is the highest. Consumer complaints are classified, one of which is consumer complaints in E-Commerce where the total number of complaints amounts to 397 e-commerce complaints, where in 2022 the number of complaints is 164, in 2023 the number of complaints is 155 and in 2024 the total number of e-commerce complaints is 78. This means that in the last 3 years there has been a decrease every year, especially in 2024 which is a very significant decrease. This means that with the existence of consumer legal protection, consumer prevention and handling will be better in the future.

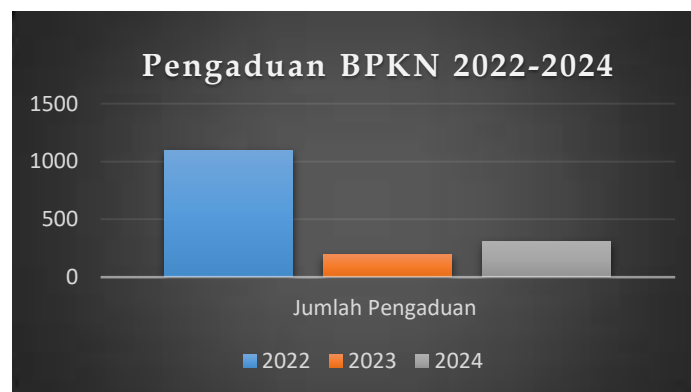


Figure I: 2024 Consumer Complaint Receipt

Source: (Statistik Pengaduan _ Badan Perlindungan Konsumen Nasional (BPKN), n.d.)

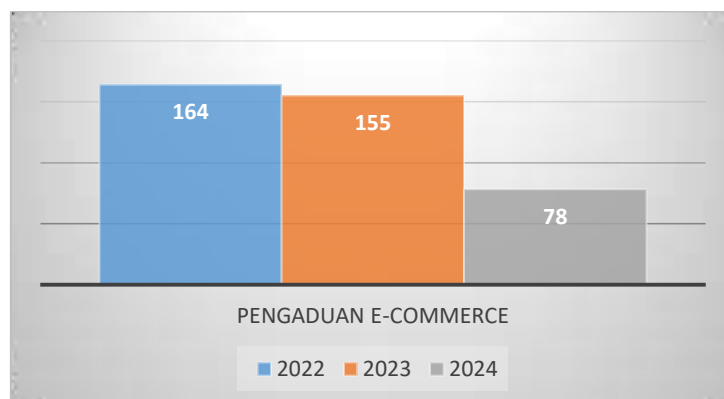


Figure 2: Total E-Commerce Complaints 2022-2023

Source: (Statistik Pengaduan _ Badan Perlindungan Konsumen Nasional (BPKN), n.d.)

So, in relation to the legal protection of losses experienced by consumers based on the Civil Code and the UUPK are special regulations related to buying and selling transactions and online transactions. The protection provided by the Civil Code and the UUPK is preventive protection, namely preventing losses to consumers before they occur. This preventive protection is also the basis for the Government to protect consumers who make online buying and selling transactions.

3.2. Responsibility of business actors to Consumers for losses in the purchase of inappropriate goods online

The principle of responsibility is very important in consumer protection law. In cases of consumer rights violations, caution is needed in analyzing who should be held responsible and how far the responsibility can be imposed on the relevant parties. Some formal sources, such as laws and regulations and standard agreements in the field of civil law, often provide restrictions on the responsibilities borne by the violator of consumer rights (Mahardika, 2014).

There are four principles of accountability in general, namely responsibility for mistakes, presumption of responsibility, presumption of not always responsibility, and direct responsibility (Amalia, 2024).

a. The principle of responsibility based on the element of fault

The principle of liability based on fault (fault liability or liability based on fault) is a principle that is quite common in criminal and civil law. In the Civil Code, especially Article 1365, Article 1366 and Article 1367, this principle is firmly held.

b. The principle of presumption to always be responsible

This principle states that the defendant is always considered responsible, until he can prove his innocence. So the burden of proof is on the defendant.

c. The principle of presumption not to always be responsible

This principle is the opposite of the second principle. The principle of presumption of not always being liable is known only in a very limited scope of consumer transactions, and such limitations are usually justified by common sense.

d. The principle of absolute responsibility

The principle of absolute responsibility is often identified with the principle of absolute responsibility. However, there are also experts who distinguish the two terms above.

Responsibility for online buying and selling activities, business actors have the potential to get liability demands, especially if the products sold make their consumers lose

money. Business actors who sell products to consumers are required to provide clear, complete, and appropriate information to prevent transaction errors. In civil law, the principle of responsibility of business actors based on elements of fault is included in Article 1365 of the Civil Code, which is commonly known as the article on unlawful acts, requires the fulfillment of four main elements, namely: the existence of an act, the existence of an element of error, the existence of losses suffered, the existence of a causal relationship between fault and loss. Where business actors make mistakes by providing goods that are not in accordance with what consumers buy, whether intentional or unintentional. The form of responsibility of business actors is compensation to consumers by replacing appropriate goods or returning money to consumers. In Article 1366 of the Civil Code, where every person is responsible, not only for losses caused by actions, but also for losses caused by negligence or recklessness. In addition, Article 1367 paragraph (1) of the Civil Code states that everyone must be responsible for the person or object under their control (Albabana, 2020). The content of these articles is a form of responsibility in the form of risk responsibility where business actors are faced with various risks due to their own negligence or the negligence of their employees, the way of the form of responsibility is to request the implementation of the agreement, and ask for compensation and in the reciprocal agreement can be requested to cancel the agreement as well as ask for compensation.

The responsibility of business actors in the Consumer Protection Law is the obligation of business actors and consumer rights where in accordance with Article 4 letter h of the Consumer Protection Law is entitled to compensation, compensation, and/or replacement if the goods and/or services they receive are not in accordance with the agreement or are not as they should be. Meanwhile, in accordance with Article 7 letter g of the Consumer Protection Law, business actors are obliged to provide compensation, compensation and/or reimbursement if the goods and/or services received or used are not in accordance with the agreement (Mahayani, 2022).

In the Consumer Protection Law, business actors are included in the principle of responsibility for the element of error where business actors must be responsible for consumer losses without having to prove whether there is fault in themselves. Where the fault of the business actor who sends the goods is not suitable, the business actor is obliged to compensate for consumer goods that are not in accordance with the goods ordered in accordance with Article 7 letter g (Handriani, 2020).

In addition, in Article 19 of the UUPK, it is stated that: (1) Business actors are responsible for providing compensation for damage, pollution, and/or consumer losses due to consuming goods and/or services produced or traded; (2) Compensation as intended in paragraph (1) may be in the form of refund or replacement of goods and/or services of similar or equivalent value, or health care and/or provision of compensation in accordance with the provisions of applicable laws and regulations .

Based on Article 7 and Article 19 of the UUPK above, the responsibility of business actors in the consumer protection law is the obligation for business actors to provide compensation for losses, either in the form of refunds, replacement of similar or equivalent products, health care and/or compensation, for losses suffered by consumers, both damage, pollution, and/or material and health losses due to consuming products offered by business actors. So in this case, business actors are obliged to provide correct and honest information about the products offered as regulated in Article 9 of the UUIITE states, business actors who offer products through Electronic Systems must provide complete and correct information related to the terms of the contract, manufacturers, and products offered (Indonesia, 2016) .

Buyers are also given the freedom to ask the seller for further availability and product specifications through the online chat or e-mail feature.

For business actors who refuse to fulfill compensation to consumers, it can be submitted through a lawsuit to the Consumer Dispute Resolution Agency (BPSK) or to the general judicial body where the legal position of the consumer is located. Settlement through BPSK is regulated in Article 23 Business actors who refuse and/or do not respond and/or do not meet the compensation for consumer demands as referred to in Article 19 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), can be sued through the consumer dispute resolution agency or submit to the judicial body at the place where the consumer is located (Saerang et al., 2022).

Based on the explanation above and as stipulated in the articles above, the responsibility of business actors due to losses from consumers is based on the existence of a legal relationship between consumers and business actors. The legal relationship not only includes the legal relationship that is born at the time of the agreement, in this case regarding everything related to the product, between consumers and business actors, but also includes the legal relationship that is born because of the law. Legal relations born because of the law, contain the meaning that the legal relationship can be created by the will of the law.

4. Conclusion

Legal protection to consumers against goods that are not in accordance with what is purchased, namely in the form of protection of consumer rights, namely consumers have the right to get clear, correct and honest information and the right to compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or not as they should be regulated in Article 4 paragraph (8) and Article 7 letter b concerning business actors providing correct information, Be clear and honest about the condition of goods and/or services and provide explanations of use, repair and maintenance. This is regulated in Law Number 8 of 1999 concerning Consumer Protection. In addition, the application of legal protection in the Civil Code is regulated in Article 1320 concerning the legal conditions of an agreement where if the conditions of sale and purchase are not met, there will be a default where the perpetrator is responsible for providing compensation to consumers.

The form of responsibility of business actors in the losses received by consumers for the goods purchased is not appropriate, where business actors provide compensation for damage, pollution, and/or consumer losses due to consuming goods and/or services produced, traded or contracted, this is regulated in Article 7 and g of Law Number 8 of 1999 concerning Consumer Protection. Compensation can be in the form of refunds or replacement of goods and/or services of the same or equivalent value, or health care and/or compensation in accordance with the provisions of applicable laws and regulations. In the Civil Code, the form of responsibility of business actors is regulated in Article 1365, Article 1366, and Article 1367 of the Civil Code where business actors are responsible for consumer losses caused by acts caused by negligence where business actors must be responsible for objects under their control.

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