

Consumer Losses Due to Business Actors in Online Stores: Legal Analysis and Solutions

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Abstract

In healthy business or economic activities, a balance of legal protection is needed for consumers and business actors, this is because many consumers are harmed by the fraudulent actions of business actors. The problem formulation is: How is the validity of online transactions via Instagram viewed from Article 1320 of the Civil Code and what form of legal protection is provided for consumers due to losses by online shop business actors on Instagram. Normative juridical research method with a qualitative approach. The legal basis for online transactions is the same as transactions in general, referring to the basic provisions of Article 1320 of the Civil Code as a condition for the validity of the agreement, whereas online sales and purchase agreements remain as valid as conventional sales and purchase agreements, if they still comply with Article 1320 of the Civil Code. If the consumer's rights are not fulfilled, the consumer can take legal action as regulated in Article 38 and Article 39 paragraph (2) of the ITE Law and Article 47 and Article 48 of the Consumer Protection Law. Suggestions that can be given in the future need to be made legal regulations that specifically regulate e-commerce so that consumer rights in electronic transactions, especially using Instagram media, which is not used for selling purposes like other e-commerce which is specifically designed for online shopping, can be better guaranteed.

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1. INTRODUCTION

The need for legal protection for consumers is part of the hope of realizing healthy business activities. In healthy business or economic activities, a balance of legal protection is needed for consumers and also business actors. Not infrequently, many consumers are harmed by business actors, so that with the condition of consumers who are harmed due to fraudulent actions of business actors, resulting in the need for increased efforts to protect consumer rights, so that they can be enforced fairly, but in providing protection to consumers should also not be to the point of killing the business of business actors, because the existence of business actors is an essential position to drive the wheels of the country's economy, so that in the future provisions that provide protection for consumers must be balanced with legal protection for business actors.

Based on Article 1 number (1) of Law Number 8 of 1999 concerning Consumer Protection, it is stated that "Consumer protection is all efforts that guarantee legal certainty to provide protection to consumers". The legal certainty in question is the certainty to be able to protect consumer rights which are then strengthened by the existence of special laws with the hope that in the future business actors will no longer carry out arbitrary actions, which end up harming consumers, with the existence of the Consumer Protection Law,

consumers will have the same rights and position, so they can sue or sue if it turns out that their rights have been violated by business actors.

The Consumer Protection Law states that consumer protection is any effort to ensure legal certainty and provide legal protection to consumers. This consumer protection encompasses a broad scope, encompassing consumer protection for goods and services, starting from the stage of obtaining goods and services to the consequences of using those goods or services. The scope of consumer protection can be divided into two aspects: (Rosmawati, 2017: 6-10)

1. Protection against the possibility that the goods delivered to consumers do not match what was agreed upon;
2. Protection against the imposition of unfair conditions on consumers.

With the rapid development of technology, many consumers are conducting their transactions electronically. This technology has created new business opportunities for entrepreneurs to utilize electronic or social media for commerce, one example being the use of Instagram as a new method for online shopping. (*e-commerce*) to make transactions. The implementation of online buying and selling which is currently in demand by the public through Instagram media will make it easier for consumers to meet their life needs. Through Instagram intermediaries, it makes it easier for consumers to shop, by shopping online, consumers do not have to come to the store directly, but can more easily find the desired product without having to bother looking from one store to another, can see price comparisons, products and different qualities based on the descriptions listed by business actors, can interact with various business actors in order to find better product quality, with online shopping everything seems easier to access, but it is not uncommon for online stores on Instagram to sell fake products that do not match the description, they display photos of original branded products and then claim that the goods sold are of the best quality.

After chatting it ends with an agreement between the two parties, where the consumer agrees to purchase the item and the business will send it, provided that a certain amount of money and shipping costs are paid to the business's account number. Usually, the business will ask the consumer for proof of payment by sending a photo of the proof of payment to room *chat*. Then the item will be shipped and the consumer will request a shipping receipt number as proof that the item has been actually shipped. However, after three to four days of waiting, the item still hasn't arrived or what arrives doesn't match the seller's description. (Mutia Rahma Wardani, *and all* 2020 : 851).

Based on Article 4 letter (c) of the Consumer Protection Law, it states that "Consumer rights include the right to correct, clear and honest information regarding the condition and guarantee of goods and/or services", if examined from the perspective of the Consumer Protection Law, then the case as explained previously constitutes a violation of consumer rights as regulated in Article 8 paragraph (1) letter (f) of the Consumer Protection Law which prohibits business actors from producing or trading goods/services that do not comply with the promises stated in the label, label, description, advertisement or sales promotion of the goods/services.

Because as a consumer, based on Article 4 letter (h) of the Consumer Protection Law, consumers have the right to receive compensation or damages if the product received does not comply with the agreement, and for business actors who have committed fraud or dishonest acts in conducting transactions, they can be subject to criminal penalties as regulated in Article 62 paragraph (2) of the Consumer Protection Law with the threat of imprisonment for a maximum of 5 (five) years or a maximum fine of IDR 2,000,000,000 (two billion).

PROBLEM

1. How is the validity of online transactions via Instagram reviewed from Article 1320 of the Civil Code?
2. What form of legal protection is provided to consumers due to losses caused by online shop business actors on Instagram?

2. RESEARCH METHOD

1. Type of research: The type of research used is normative juridical, which is a scientific research procedure to discover the truth based on the logic of legal science from a normative perspective. The legal research method used is through researching and analyzing library materials or secondary data. (Laina Rafianti, 2022: 18)
2. Research approach: the research approach used is qualitative research, a type of research whose findings are not obtained through quantification procedures, statistical calculations, or other methods that use numerical measurements. The principle of qualitative research is to understand the object being studied in depth with the aim of obtaining general theories or laws of causal relationships. (Ajat Rukajat, 2018: 4.)
3. The data collection method used is a literature study, which is carried out by examining documents, collecting data or information in the form of books, scientific papers, laws and other written materials that are appropriate to the research object. (Zainuddin Ali, 2009: 224).
4. The data analysis technique is qualitative descriptive, namely the process of grouping and adjusting data obtained from a systematic description based on legal theories and understandings contained in legal science to obtain a final conclusion that is more significant and scientific. (Asfinawati,*et.all* 2020 : 541).

3. DISCUSSION

The Validity of Online Transactions Through Instagram as Reviewed from Article 1320 of the Civil Code

Utilizing the internet, even as a means of commerce, offers numerous benefits, including simplifying transactions, speed, practicality, and affordability. Trading activities utilizing internet media, such as Instagram, have enormous potential for developing online commerce or business. A sale and purchase agreement is a type of agreement regulated by the Civil Code, where one party commits to hand over an item and the other party is obligated to pay the agreed price. One characteristic of online sales is that the sale and purchase agreement is not conducted face-to-face, so the basis for implementing an online sale and purchase agreement is based on the principle of trust because there are no agreement documents as with conventional sales and purchases.

The legal basis for online transactions is the same as transactions in general, with reference to the basic provisions of Article 1320 of the Civil Code as a valid condition for the agreement. The position in buying and selling through Instagram media, the subject of the sale and purchase is the business actor who sells goods/services, while the buyer is the consumer, behind the ease of buying and selling on Instagram, there is a weakness, namely the price and goods or quality of the goods cannot be assessed directly by the buyer so that sometimes the implementation of the buying and selling is very vulnerable to fraud.

The elements of the agreement are the elements *essential* or essential elements which are part of an agreement without which the agreement would not be possible, for example the price in a sales and purchase agreement, *natural* elements which is the part which is determined by law as a regulatory regulation, for example insurance and elements accidental. These are sections added by the parties to an agreement that are not regulated by law, such as the sale and purchase of a house and its furnishings. (Desi Syamsiah, 2021:

328). Online sales and purchase agreements remain valid, just like conventional sales and purchase agreements, provided they meet Article 1320 of the Civil Code, a requirement for a valid agreement.

In Article 1320 of the Civil Code, the conditions for a valid agreement consist of "The agreement of those who bind themselves, the capacity to make an agreement, a certain thing, a cause that is not prohibited", while in buying and selling via Instagram media, an internet media is required as the main media, so that the trade transaction process occurs without the need for a direct meeting between the parties, then the conditions for an online buying and selling agreement are: (Indira,et.all 2021 : 245).

1. Subjective conditions

- a. The agreement between those who make a purchase agreement. In online sales, the seller makes the offer via Instagram, allowing all consumers to access it freely. If a consumer is interested, they simply click on the desired item and will communicate with the seller via email, *direct message* on Instagram.
- b. The skills of the parties who carry out the sales and purchase agreement, in online transactions carried out without direct face-to-face meetings so that it will be difficult to see the skills of both business actors and consumers, in online sales and purchases in general are not limited by all ages because all groups are free to carry out transactions, where in the agreement there are *term and condition* as a standard agreement, so that when consumers make a purchase they are deemed to have agreed to the agreement.

2. Objective conditions

- a. In certain online sales, business owners will offer goods through Instagram posts accompanied by product descriptions. This situation, of course, means that the objective requirements for a valid agreement under the Civil Code have been met.
- b. A lawful reason, in online buying and selling, the goods offered must not be contrary to the law, morality and public interest so that the agreement does not conflict with what is regulated in Article 1320 of the Civil Code.

Forms of Legal Protection for Consumers Due to Losses by Online Shop Business Actors on Instagram

When making an agreement, the most hated thing is when there is a breach of contract, in online buying and selling, especially when using the Instagram application which does not have an organized online buying and selling system like *e-commerce*. Other companies like Tokopedia, Lazada, Shopee, and others will be very detrimental to consumers when they try to claim for losses. Default, or when purchasing goods that don't match the product description on Instagram, is very difficult to hold accountable because the business owner could disappear by replacing the product of *username* of Instagram or block the consumer, but to protect the interests of consumers caused by online shop business actors on Instagram, Law 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions and Law Number 8 of 1999 concerning Consumer Protection was enacted.

Before making a transaction, especially on Instagram, which is not specifically for online sales like Blibli, consumers need proper validation to attract consumer interest, such as including clear product descriptions and not with the intention of deceiving consumers. If business actors do not provide good product descriptions, consumers will be the ones who are harmed in this case, which could lead to future defaults. When defaults occur, consumers must be able to be legally protected as a form of legal certainty regarding consumer rights as regulated in Article 4 of the Consumer Protection Law.

If consumer rights are not fulfilled, consumers can take legal action as regulated in Article 38 and Article 39 paragraph (2) of the ITE Law and Article 47 and Article 48 of the Consumer Protection Law. In carrying out sales and purchases, business actors have obligations as regulated in Article 7 of the Consumer Protection Law, but if these rights are not implemented, then business actors have an obligation to be responsible, such as providing compensation by way of a refund if the goods do not arrive, compensation if the goods are damaged or do not match the description.

A. CLOSURE

1. Conclusion

The validity of online buying and selling is the same as the validity of conventional agreements, as long as the agreement is implemented based on the valid conditions of the agreement regulated in Article 1320 of the Civil Code, the agreement is valid for the parties, thus giving rise to rights and obligations between the two parties as regulated in Article 1233 of the Civil Code. The form of legal protection for consumers who are harmed by the actions of irresponsible online stores on Instagram, consumers can take legal action as regulated in Article 38 and Article 39 paragraph 2 of the ITE Law and Article 47 and Article 48 of the Consumer Protection Law.

2. Suggestion

- a. In the electronic transaction system, it is not covered by the Consumer Protection Act, so in the future it is necessary to create legal regulations that specifically regulate this *e-commerce* so, that consumer rights in electronic transactions, especially using Instagram media, are not used for selling purposes, as is the case *commerce* others that are specifically designed for online shopping so that if there is a loss for consumers, it can be claimed more easily and can be guaranteed.
- b. There is no standard that regulates this *e-commerce*, regarding security in transactions via Instagram, because Instagram was initially used to upload the daily lives of its users, not for selling, so that when consumers are harmed by dishonesty of business actors, it will be difficult for consumers to claim, so it is necessary to carry out new innovations if you really want to use Instagram as a means of online buying and selling like other things.

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