

Consumer Protection in Default in Buying and Selling On line With a Pre Order System (Case Study of Tas Nama Studios Products)

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Abstract

This research aims to determine consumer protection against default in online buying and selling using a pre-order system and the legal responsibility of NAMA Studios bag business actors towards consumers who do not receive the bags they ordered. The research method used is a normative juridical research method which examines the basics of statutory regulations. The results of the research conducted showed that consumer protection for defaults in online buying and selling using a pre-order system has been accommodated in the Consumer Protection Law and includes defaults. The way consumers can protect their rights is through court and non-court methods. Consumers from the Nama Studio business actor can demand responsibility from the business actor based on Article 16 of the Consumer Protection Law

Abstract

Penelitian ini bertujuan untuk mengetahui perlindungan konsumen pada wanprestasi dalam jual beli online dengan sistem pre order dan tanggung jawab hukum pelaku usaha tas NAMA Studios terhadap konsumennya yang tidak kunjung mendapat tas yang dipesan. Metode penelitian yang digunakan adalah metode penelitian yuridis normatif yang meneliti dasar-dasar pada peraturan perundang-undangan. Hasil dari penelitian yang dilakukan ini diperoleh Perlindungan konsumen pada wanprestasi dalam jual beli online dengan sistem pre order telah diakomodir dalam Undang-Undang Perlindungan Konsumen dan termasuk wanprestasi. Cara yang bisa dilakukan konsumen untuk melindungi haknya adalah melalui metode pengadilan dan non pengadilan. Konsumen dari pelaku usaha Nama Studio dapat menuntut pertanggungjawaban kepada pihak pelaku usaha berdasar pada Pasal 16 Undang-Undang Perlindungan Konsumen

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1. INTRODUCTION

Consumers in their relationships with business actors are sometimes in a low bargaining position and are very vulnerable to having their rights violated. Therefore, there is a need for legal protection that can protect consumers and their rights. Based on Article 1 number 1 of Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as the Consumer Protection Law), Consumer Protection is any effort that ensures legal certainty to provide protection to consumers. Based on Article 1457 of the Civil Code (hereinafter referred to as the Civil Code), buying and selling is an agreement, whereby one party binds himself to hand over an item, and the other party to pay the promised price.

Development over time has occurred very rapidly. Humans create various innovations and discoveries that can help them live their lives and make things easier, which makes the way humans do things change with the times. One of the innovations that provides major changes is technology. The main aim of the technological development process is to simplify human activities and activities and prioritize efficiency. The internet is one of the advancements in the field of technology that is developing very rapidly and covers various aspects, including the process of fulfilling needs which is carried out by buying and selling transactions where buying and selling transactions can be carried out between sellers and buyers without the need for the two to meet each other directly.

Buying and selling transactions, or in general, commercial transactions (profit transactions), which are usually carried out conventionally, have undergone changes to a more dynamic

direction, namely through the use of the internet network. Online buying and selling transactions are known as e-commerce, which can simply be interpreted as electronic transactions. Based on the provisions of Article 1458 of the Civil Code, the sale and purchase is deemed to have occurred between the two parties, as soon as these people reach an agreement regarding the object and its price, even though the object has not been handed over, nor the price has been paid.

One method of buying and selling that is developing in society is the method of ordering a product in advance, where the buyer orders an item from the seller and the seller only produces the item when he receives a request from the buyer. Both parties have agreed on what goods will be produced by the seller in the order which will later be handed over to the buyer and what price the goods will be.

This buying and selling activity using a pre-order system in the realm of online trading is called pre-order. Pre-order is a system for purchasing goods by ordering and paying in advance, with a grace period for waiting (estimated) delivery of goods that has been determined by the seller. Online sales and purchase agreements with a pre-order system usually contain very specific provisions or clauses, namely the order period and when the product will be handed over to the buyer or consumer.

It is not uncommon for buying and selling activities in e-commerce that use a pre-order system to experience various problems, namely the occurrence of defaults which tend to be committed by the seller. The seller does not carry out his performance, namely not fulfilling the buyer's order or being late in fulfilling it after the agreed deadline for producing a product for which the price has been paid to the seller.

Vulnerability to violations of consumer rights or default by business actors in online trading with a pre-order system is due to the agreement being made between the seller and the buyer without meeting each other face to face, as well as the lack of written evidence which results in the absence of evidence of buying and selling transactions. Another thing that is a cause of vulnerability to default in online buying and selling using a pre-order system is the implementation of standard clauses from business actors who make consumer choices, namely whether to agree or not to make an agreement or buy and sell at all.

Cases of default in buying and selling using the pre-order system include the case of the bag product business "NAMA Studios". The NAMA Studios business has received many complaints from consumers regarding delays in delivering products purchased or ordered through the pre-order system.

Based on the background of this problem, the researcher conducted research with the title "Consumer Protection against Default in Online Buying and Selling with a Pre Order System" and conducted a study on the case of Nama Studios bag products. (The sentence formulation is corrected)

2. RESEARCH METHODS

The research method used is normative juridical research. According to Philipus M. Hadjon, normative legal research is research aimed at finding and formulating legal arguments through analysis of the main problem. According to Roni Hanitijo Soemitro, normative legal research is defined as research used to study legal rules and principles.

The researcher examined the basics of legal regulations regarding agreements, standard clauses, and consumer protection contained in the Civil Code and Consumer Protection Law, specifically provisions that are felt to provide legal protection to consumers in online buying and selling. pre-order system especially for consumers of name bag products who never get the bag they ordered. It is hoped that the norms or regulations regarding certainty of legal protection regarding this issue can be explained. This is because in normative legal research, law is conceptualized as what is written in legislation (law in book).

In this research, researchers used a statutory approach which was carried out by reviewing and analyzing all laws and regulations related to the legal issue being handled. The data sources used in this research are secondary data sources in the form of statutory regulations, including:

- a) Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection
- b) laws of the republic Indonesia Number 11 of 2008 concerning Electronic Information and Transactions which has undergone several changes based on Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions.
- c) Civil Law Code

3. RESEARCH RESULTS AND DISCUSSION

a. Consumer Protection for Default in Online Buying and Selling Using a Pre Order System

Fitzgerald explains Salmond's theory of legal protection that law aims to integrate and coordinate various interests in society because individual subjects of this law are in a traffic of interests. These interests often meet and clash. Protection of certain interests can only be done by limiting the various interests of other parties.

One of the legal protections is consumer protection, where consumers have their rights legally protected in their relationships with sellers or business actors. The basic concept of the relationship that occurs between consumers and business actors which includes buying and selling activities, based on Article 1457 of the Civil Code, buying and selling is or is included in the category of agreement where the parties agree, approve and bind themselves to hand over an object, and the other party pay the agreed price.

Based on Article 1313 of the Civil Code, an agreement is an act by which one or more people bind themselves to one or more other people. J. Satrio considers that this definition is still inaccurate and too broad, J. Satrio suggests that the formulation be changed to: "an agreement is an action that occurs between one or two or more people binding themselves to another person or where both parties bind themselves to each other.

The conditions for an agreement to be considered valid as regulated in Article 1320 of the Civil Code are as follows:

- 1) They agreed to bind themselves
- 2) Ability to create an engagement;
- 3) One thing is certain, the parties who are binding themselves must know that the object being agreed upon is clear or at least can be determined and must not be floating or vague.
- 4) A lawful cause;

The legal relationship of an agreement in the form of an agreement gives rise to legal consequences in the form of rights and obligations. The fulfillment of these rights and obligations is one form of the legal consequences of an agreement. These rights and obligations in the sale and purchase agreement apply reciprocally to the parties. The obligations of the first party are the rights of the second party and vice versa.

In online buying and selling with a pre-order system, the activities are carried out including what is called electronic transactions, which are described in Article 1 number 2 of Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE), namely: "Electronic Transactions are legal acts carried out using computers, computer networks and/or other electronic media".

Agreement or contract on sale buying online with a pre-order system is not done on paper but is done via electronic media, does not require the presence of the parties in one place, but in cyberspace by bargaining via click to click. Usually the business actor or seller directly includes the terms or clauses in the agreement for this electronic transaction. Clauses that are directly included unilaterally by business actors are called standard clauses.

The standard agreement is known as a take it or leave it contract. Take it or leave it means there are only two choices, namely making a purchase by agreeing to an agreement with the conditions imposed by the seller or not agreeing to the standard agreement and not making the purchase. According to Prof. Johannes Gunawan, consumer protection expert, a standard agreement is an agreement in which there are certain conditions made by the business actor,

without involving consumers in drafting the contract, so that consumers have no other choice, and are under their control.

Based on the Consumer Protection Law, if a standard clause is developed and included in a document by business actors as outlined in a document and/or agreement that is binding and must be fulfilled by consumers. Provisions regarding standard clauses in legal protection for consumers are contained in Article 18 of the Consumer Protection Law, in paragraph (1) lists things that are prohibited from being included in a standard clause, then in paragraph (2) contains a prohibition on the inclusion of standard clauses located or the form is difficult to see or cannot be read clearly or the expression is difficult to understand. It is not uncommon for a standard agreement to contain many standard clauses which are located separately from the main page. Consumers must be given the knowledge to be more careful and thorough in reading and understanding the clauses imposed by business actors.

The clauses in a standard agreement constitute or include the performance or conditions in the process of fulfilling an achievement by the parties. So these achievements can be considered attached to each clause in the standard agreement. Violation of standard agreements can also be categorized as a breach of contract.

Subekti stated that a debtor's default can be in the form of:

- 1) Not doing what he is willing to do and do.
- 2) Carrying out what he promised, but not as promised.
- 3) Did what was promised but was late.
- 4) Doing something that according to the agreement is not allowed to be done.

Consumer protection when there is a default by a business actor is strictly regulated in Article 4 of the Consumer Protection Law, namely that consumers have the right to receive compensation, compensation and/or replacement if the goods and/or services received do not comply with the agreement or are not as they should be. Business actors who violate the prohibition on trading goods and/or services that do not conform to the promises in labels, tickets, information, advertisements or promotions can be punished under Article 62 paragraph (1) of the Consumer Protection Law with a maximum imprisonment of 5 years or a maximum fine. a lot of IDR 2 billion.

Efforts to resolve consumer disputes are regulated in Article 23 of the Consumer Protection Law, and can be done in two ways, namely:

- 1) Consumers who suffer losses can file a lawsuit with the consumer dispute resolution body (BPSK), and
- 2) Consumers who suffer losses can file a lawsuit through the courts within the General Court.

Settlement of consumer disputes through the courts is sometimes faced with several obstacles, including resolving disputes through the courts often takes a long time, and litigation costs tend to be expensive. This is a significant problem for consumers who buy and sell only on a small scale and for small amounts.

Another effort that can be taken is to resolve disputes outside of court. Out-of-court settlements can be submitted through the Consumer Dispute Resolution Agency (BPSK) as regulated in Article 52 letter a, namely by:

- 1) Mediation
- 2) Conciliation
- 3) Arbitrage

Claims that can be brought against business actors who are in default include, among others, in the form of administrative responsibility from business actors as regulated in Article 60 of the Consumer Protection Law, namely payment of compensation of a maximum of IDR 200,000,000.00 for violations of the provisions regarding:

- 1) Failure to compensate consumers [Article 19 paragraphs (2) and (3).
- 2) Advertising that does not meet the requirements (Article 20).
- 3) Failure to provide spare parts (Article 25).

4) Failure to fulfill the promised guarantee/guarantee.

Meanwhile, the criminal liability imposed on business actors is stated in Article 61 of the Consumer Protection Law, which contains:

- 1) A maximum prison sentence of 5 years for violations of the provisions of Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letters a, b, c, and e, paragraph (2); and Article 18.
- 2) A maximum prison sentence of 2 years or a maximum fine of IDR 500,000,000.00 for violations of the provisions of Article 11, Article 12, Article 13 paragraph (1), Article 14, Article 16, and Article 17 paragraph (1) letters d and f.
- 3) Legal Responsibility of NAMA Studios Bag Business Actors towards Consumers Who Do Not Get Bags Ordered Through Online Purchases Using the Pre-Order System

The NAMA Studios business organizes discounts on purchasing bag products, however the discount applies to transactions with a pre-order system option for several months according to the agreed period, during this period of several months the buyer will wait until the order is ready. In online sales of NAMA Studios bag products, buyers in the pre-order system also still have to pay in full upfront the price of all products they purchase.

Based on the reader's letter entitled "The rest of the order has not been sent, NAMA Studios' response is disappointed" which was sent and published on news.detik.com, Salman said that he had pre-ordered six Lite bags from NAMA Studios on February 24 2018 with the order number 63749. Then Salman received information from NAMA Studios saying that the new order bag would be finished at the end of June 2018 because the Eid holiday was cut short. Starting from mid-July 2018, Salman had visited the bag collection location three times to pick up the remaining three bags that he had not received, but to no avail. After the promised period had passed, Salman continued to try to contact NAMA Studios, but NAMA Studios was very unresponsive and Salman was always asked to continue waiting without being given clarity or certainty about the delivery of the promised goods and compensation. Last time, NAMA Studios advised Salman to apply for a refund or return of payment if he didn't want to wait. Salman considered that this suggestion was very unfair because he had been waiting for a delay of almost three months.

Complaints about delays NAMA Studios exceeding the time period agreed in the online purchase and sale agreement using the pre-order system also came from many other NAMA Studios consumers, another consumer who also complained was Andy. Based on a reader's letter entitled "There are internal problems at NAMA Studios, consumers also suffer losses" which was sent and published on news.detik.com, Andy said that he had pre-ordered bags from NAMA Studios for 6 months starting from August 26 2019. online and have made payment.

As of May 13 2020, Andy sent this reader's letter, the status of the delivery said that he was still waiting in line. The electronic letter or e-mail that Andy sent to NAMA Studios also did not receive a response. Via Instagram @namastudios, NAMA Studios conveyed many reasons for the many delays that occurred, one of which was due to the COVID-19 pandemic and another reason, namely internal problems, namely experiencing fraud so that the delivery of bag products was delayed.

Another buyer who published her complaint was Natalia, who stated that she had pre-ordered NAMA Studios bag products for three months. However, Natalia had not received the Nama Studios bag product for five months. When Natalia asked for clarity from NAMA Studios, she was only given a link to the page containing the terms and agreement or terms and conditions from NAMA Studios as a standard agreement which had also been agreed to by the buyer in the online purchasing process for NAMA Studios bag products using the pre-order system.

Based on previous explanations, consumers from NAMA Studios business actors experience difficulties in defending their rights to obtain fulfillment of their achievements in the form of timely delivery of goods, or even just to fulfill their delivery of goods. The terms

and conditions imposed by the NAMA Studios business actors apply as standard agreements or clauses from NAMA Studios which must be agreed to by buyers if they want to buy products from NAMA Studios.

The terms and conditions included as a standard clause in the sale and purchase agreement for NAMA Studios bag products regulate several things, namely that the sale and purchase transaction is carried out using an ordering or pre-order system with a period of three months, this period is the time period for Nama Studios to carry out production of bags ordered by consumers. Then the next clause in the terms and conditions is that when ordering Nama Studios bags, consumers are required to make full payment for the price of the goods purchased at the start of the order. Apart from that, there is also a clause on overmacht or force majeure which states that NAMA Studios is not responsible to the User for any violation, obstacle or delay in implementing this Agreement or Terms and Conditions by NAMA Studios which is caused by force majeure (force majeure) or any circumstances or conditions beyond our control. Including but not limited to:

- a) Strike, lock-out or other industrial action;
- b) Civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, epidemic, war (whether declared or not) or threat or preparation for war;
- c) Fire, explosion, storm, flood, earthquake, landslide, epidemic or other natural disaster;
- d) Impossibility of using trains, shipping aircraft, motorized transportation or other means of transportation whether public or private;
- e) Impossibility of using public or private telecommunications networks;
- f) Action, government decisions, laws, regulations or restrictions, shipping, postal or other transportation related strikes, failures or accidents; and/or
- g) Damage to the network or computer system or internet system on our Website.

Based on the explanation of the terms and conditions which are applied as standard clauses in the Nama Studios bag sale and purchase agreement, Nama Studios uses the force of disease clause, which in this case is the Covid-19 virus disease outbreak, as an excuse for disclaiming responsibility for delays in fulfilling orders for bags. have been ordered by consumers.

In the case of the Nama Studio business actor who does not fulfill his achievements, namely delivering goods ordered by consumers according to the agreed deadline, the Nama Studio business actor has defaulted and has not kept the agreement in the online buying and selling activities using the pre-order system that he has carried out. Regarding delays in delivery of products from Nama Studio, it is regulated in Article 16 of the Consumer Protection Law, which states that business actors in offering goods and/or services through orders are prohibited from:

- a) not fulfilling orders and/or agreed completion times as promised;
- b) not keeping promises regarding services and/or achievements.

Consumers, in an effort to defend their rights, can file a claim for dispute resolution with the Consumer Dispute Resolution Agency (BPSK), this is as regulated in the Consumer Protection Law, which is one of the efforts to resolve disputes between consumers and business actors. This step is more appropriate than having to sue through court.

4. CONCLUSION

Consumer protection for defaults in online buying and selling using a pre-order system has been accommodated in the Consumer Protection Law. The online buying and selling agreement with a pre-order system in the agreement takes the form of standard clauses which are also agreed to by the consumer when carrying out the buying and selling, both regarding the terms and conditions that apply as well as regarding the ordered product and order deadline. Violation of standard clauses that have been agreed upon by consumers and business actors constitutes a breach of contract, which infringes consumer rights. Legal protection efforts for injured consumer rights can be carried out through court and non-court channels or through BPSK either by

mediation, conciliation and mediation. The form of responsibility of business actors is in the form of administrative and criminal responsibility as regulated in the Consumer Protection Law.

Consumers from the Nama Studio business actor whose rights are violated due to default on the part of the Nama Studio business actor in the form of delays in delivering ordered products past the agreed deadline can demand responsibility from the business actor. Provisions regarding this matter are stipulated in Article 16 of the Consumer Protection Law which regulates the prohibition on non-compliance with orders according to the promised completion time. Claims for legal responsibility by business actors can refer to Articles 60 and 61 of the Consumer Protection Law.

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