

Legal Consequences of Unlawful Act in E-Commerce

by Hetty Hassanah

Submission date: 27-Jul-2023 01:57PM (UTC+0700)

Submission ID: 2137468575

File name: document.pdf (246.4K)

Word count: 3438

Character count: 18702

Legal Consequences of Unlawful Act in E-Commerce

Hetty Hassanah¹, Muhammad Margani²

Faculty of Law, Universitas Komputer Indonesia, Bandung, Indonesia

¹hetty.hassanah@email.unikom.ac.id; ²marganimuhammad@gmail.com

Abstract The purpose of this study is to determine the legal consequences of unlawful acts committed in e-commerce. The research method used is analytical descriptive, with a normative juridical approach, both through library research and field studies and the data obtained is analyzed in a qualitative juridical manner. Based on the results of the study, it was found that there were many unlawful acts in e-commerce, which resulted in losses for various parties, especially consumers. E-commerce is carried out borderless with the help of the internet, so this information technology can be a medium that helps e-commerce activities to be effective and efficient. However, advances in information technology do not rule out the possibility of violations of the law which may cause harm to other parties. The conclusion is that in Indonesia there are legal provisions governing acts against the law, although it is difficult to apply in cyberspace, they must still be implemented in order to achieve legal certainty and create a sense of justice. Thus the results of this study can be implemented for internet users, especially e-commerce actors, so that detrimental legal violations do not occur.

Keywords : Legal Consequences, Unlawful Act, E-Commerce

1. Introduction

Technological developments have become the main trigger for the presence of the digitalization phenomenon in the economic sector. Digitalization in the economic field is a transformation that has a real impact on all aspects. Starting from business actors, consumers, to all transaction activities that occur in it. The economic sector that is the result of the digitalization process is one of them in trading activities[1]. Trade is an economic activity that has gone through all the circumstances in the world. Trading activities continue to evolve following the times and globalization. Before technological developments became massive, trading activities were still limited to space. Trade transactions can occur when traders and consumers meet in one place. However, thanks to technological developments, trading activities are now unlimited (limitless). Trading transactions can be done anywhere and anytime just by relying on internet access.

In a report entitled Indonesian Internet Profile 2022, the Association of Indonesian Internet Providers (APJII), states that the number of Indonesians connected to the internet in the 2021-2022 period will reach 210 million people. Before the pandemic, the number of internet users in Indonesia only reached 175 million people. In other words, as long as the epidemic spreads, the number of people accessing the internet is estimated to increase by 35 million people. The AAJI report shows that the internet penetration rate in the same period reached 77.02 percent[2].

¹ For comparison, in 2018 the internet penetration rate was still 64.80 percent, and in 2019-2020 around 73.70 percent. The report released in June 2022 also presented survey results regarding people's internet behavior. This poll involved 7,568 respondents in various regions of Indonesia from January 11 to February 24 2022. Then as many as 79% of respondents admitted that their biggest reason for using the internet was to make online transactions which emphasized that e-commerce is the main driver of Indonesia's digital economy. Trading on the internet has changed the business world from traditional trading patterns to more modern trading systems, also known as virtual trading systems or e-commerce. The birth of e-commerce is not only due to the continuous development of information technology, but also because of the demands of society for services that are fast, easy, practical, and require better quality. Transactions in e-commerce are in great demand not only among producers, but also among consumers, because transactions via the internet are very profitable for many parties. In general, e-commerce has brought unique benefits to both consumers and producers. For e-commerce consumers, e-commerce has changed the way consumers get the products they want. On the other hand, for e-commerce producers, trade has simplified the product marketing process[3].

E-commerce can be understood as a type of trade transaction of goods or services carried out through internet media, based on the provisions of article 1 number 10 of Law number 19 of 2016 concerning trade, amendments to Law number 11 of 2008 state that electronic transactions are legal acts, carried out using networks and computers or electronic media. In this transaction buying and selling must be in accordance with the provisions above which have several arrangements such as in carrying out legal relations this trade must have an agreement or contract which is also carried out electronically such as a written notification sent to an email, agreement to follow the agreement in the form of a tick or tick in a column or an electronic signature indicating that the legal relationship is valid[4].

According to Article 1457 of the Civil Code, buying and selling is an agreement in which one party binds himself to surrender an object and the other party to pay the price that has been promised. Buying and selling can not only be done face to face between the seller and the buyer, but can also be done separately between the seller and the buyer, so that they are not face to face, but transactions are carried out via the internet/electronic media.

E-commerce is a modern business model that does not physically present business actors and is non-sign or does not require an original signature. E-commerce is a business by exchanging data through communication on the internet where both parties, namely sellers and buyers of goods and services, can carry out trade transactions. This method is a way that promises access that is borderless, fast and interactive which makes it easier for consumers to obtain a product according to their wishes without having to travel. Currently, the internet and e-commerce have become a way of life for people around the world, including in Indonesia.

When compared to conventional trading processes, e-commerce has several advantages for consumers, namely more affordable prices and shopping activities that are one stop shopping. Meanwhile, the advantage for business people is related to system efficiency which minimizes the risk of errors and tends to be timely. Then the advantage for market management is an increase in income. These advantages make e-commerce an alternative for business expansion for business people and have become part of the lifestyle of modern humans in today's technological era[5].

However, it cannot be denied that today's information technology seems to be a double-edged sword, because in addition to contributing to the improvement of human welfare, progress and civilization, it is also an effective tool for acts against the law[6]. Technology-based trading activities in addition to the convenience of transactions, can lead to potential irregularities that can lead to losses for consumers or business people. In fact, there have been many cases of unlawful acts that have been reported as detrimental to consumers as stipulated in Article 1365 of the Civil Code which states that:

"Every unlawful act, which brings harm to other people, obliges the person who because of the mistake of issuing the loss, compensates for the loss"

For example, in a buying and selling transaction via e-commerce. In this case, consumers have made payments through digital banking to business people, but business people do not send goods that have been ordered by consumers, or business people instead send goods that are inappropriate or damaged, so of course it is detrimental to consumers.

Currently in Indonesia there is a Law Concerning Information and Electronic Transactions (hereinafter referred to as the ITE Law). In the ITE Law there are regulations regarding electronic transactions including trading via the internet, but often cannot accommodate cases of unlawful acts in these electronic transactions due to the wide scope of the definition of unlawful acts that are not explicitly or specifically regulated in the ITE Law. the. Arrangements regarding unlawful acts are only regulated in Article 1365 BW, which requires legal interpretation in applying these provisions to cases of unlawful acts in E-commerce[7].

2. Method

The specification of this research is analytical descriptive, namely presenting facts systematically. The approach method that will be used is a normative juridical approach, in this case testing and studying secondary data regarding Legal Consequences of Unlawful Act In E-Commerce. All data obtained is analyzed qualitatively juridically, in In this case, the analysis is carried out by considering the hierarchy of laws and regulations so that one legislation does not conflict with other laws and regulations and legal certainty.

3. Results and Discussion

After the digitization of online trade transactions or e-commerce, trading activities have now undergone a sophisticated transformation that makes all forms of activity not limited to space and time. Starting with easy access to shopping centers, consumers can find what they need very easily because businesses can also advertise massively and make various offers on many platforms. If consumers are interested, they can carry out the purchasing process by first paying attention to the product information, goods and or services offered and making payments. Of course, this payment system has been integrated into the updated system, namely through internet banking or via top up on an electronic wallet that is directly connected to the marketplace[8].

This sensible trading practice then becomes a little more complex if you look at the risk of things going wrong with the transaction that should be. With the nature of transactions that do not present business actors and consumers directly which then has an impact on the trust component in social interaction theory in business, both business actors and consumers have the potential to carry out transaction irregularities whose threat is loss which can take various forms.

When a transaction occurs between a business actor and a consumer, it creates a legal relationship which results in the presence of the rights and obligations of each party bound in the transaction. This legal relationship should be maintained for smooth trade transactions. However, this does not rule out the possibility that this legal relationship will not work as it should, in other words, both business actors and consumers may injure each other's rights and obligations which will result in losses[9]. Damage to legal relations between business actors and consumers in civil terms creates two legal consequences, namely default and unlawful acts. Both are in writing regulated in the Civil Code. Both default and unlawful acts are both sourced from the responsibility of a negligent party. Responsibilities originating from defaults are preceded by an agreement which of course gives rise to the rights and obligations of the parties involved. If in carrying out legal relations with the agreement there is one party who does not carry out or violates the obligations imposed, then that party can be declared to have committed a default and for his actions, he can be held legally responsible based on default[10].

Meanwhile, acts against the law are based on the existence of legal relations in the form of rights and obligations that are based on law. If an obligation is not carried out by one party which causes the loss of the rights of the other party and the action can be categorized as an unlawful act because it is not in accordance with the rules of the legal relationship between the rights and obligations of each party. The unlawful acts listed in Article 1365 of the Civil Code (BW) only regulate the form of compensation that is imposed on the person who has caused the wrong to the injured party. This compensation arises because of an error not because of an agreement such as default. Then what becomes an element of an unlawful act according to Article 1365 of the Civil Code is that there is an act, the act is against the law, there is an error on the part of the perpetrator, there is a loss for the victim and there is a causal relationship between the act and the loss[11].

Juridically, Indonesia has various online transaction protection measures based on several statutory provisions. One of these provisions is contained in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions or can also be referred to as the ITE Law. In the ITE Law, e-commerce is quite clearly stated in these rules starting from, understanding, understanding, legal basis, organizers, legal relations of electronic transaction actors as well as accurate information, and consumer protection. In terms of the relationship between consumers and service providers in e-commerce, there are still requirements in the form of material and legal approval involved in it. So even though in this case, consumers and service providers do not meet and meet face to face, there is still a legal relationship between the two. In addition, based on the provisions of Article 65 of Law Number 7 of 2014 concerning Trade regulates the basis of electronic trading, in carrying out electronic transactions in the form of online media, a mandatory condition that must be considered is that sellers of goods or services must include information that is honest, original and accurate, to consumers. Then, there are also e-commerce legal protection provisions in Law Number 8 of 1999 concerning Consumer Protection which regulates rights and obligations for both business actors and consumers, actions that are prohibited for business actors, sanctions for violations and other consumer protection provisions. The existing provisions contain rights and obligations which are the legal basis for transaction activities between business actors and consumers. If the rights and obligations that act as "law" are violated and losses arise from one of the parties, where between the act and the

loss there is a causal relationship, then the act fulfills the element of an unlawful act and can be held accountable to the perpetrator.

Civil acts against the law itself can be pursued by filing a lawsuit against the law to the competent district court. However, before filing a lawsuit, the victim can first try to resolve the dispute outside the court which begins with giving a subpoena to the perpetrator. If the subpoena also does not produce results, then filing a lawsuit against the law to the competent District Court is a legal act. So in the end, a cooperative attitude is needed to resolve this dispute. Disputes of unlawful acts that cause harm to consumers in a civil manner can also be resolved through the Consumer Dispute Settlement Agency (BPSK), which are generally in the form of direct compensation suffered by consumers for mistakes made by business actors. Dispute Resolution Procedures at BPSK are carried out by means of conciliation, mediation, and arbitration. While the legal consequences of unlawful acts in the e-commerce sector, criminally, there must be an element of "unlawful acts that cause harm to the public at large (not to individuals)". Criminal unlawful acts must also be preceded by peace efforts through alternative dispute resolution including mediation.

So, the consequences of unlawful acts in the e-commerce sector are penalties that can come from civil lawsuits or criminal offenses. The difference between the two is that the element of loss contained in a civil unlawful act only causes harm to one individual party and then the perpetrator can be punished to compensate for the loss suffered by the victim. While the element of loss in an act against the law criminally is detrimental to the public (public) so that the punishment that can be imposed is in the form of imprisonment or a fine.

Then it is also important to understand the legal consequences of the negligence of one of the parties in the transaction whether the negligence is based on a trade agreement which is then categorized as a default, or the negligence is based on a law that is not complied with which can then be categorized as an unlawful act. This is important to understand in order to prevent the victim's lawsuit from being rejected by the authorities. Do not let it happen like a civil case with case number No.82/Pdt.G/2013/PN.Yk which was rejected by the Yogyakarta District Court with the consideration that the Panel of Judges was of the opinion that the Plaintiff's lawsuit contained obscure libel. Based on the description in the Plaintiff's lawsuit which explains that there was a trade agreement between the Plaintiff and the Defendant which was later not implemented by the Defendant and the Plaintiff categorizes it as an unlawful act even though the elements of the two are clearly different.

4. Conclusion

Technological developments have succeeded in bringing the trade sector into the digitalization era so that online-based transactions are born which in addition to facilitating parties in trade, namely businesses and consumers, also present various advantages, especially in trading activities which become more interactive without being limited by space and time. However, besides its advantages, transactions between business actors and consumers are legal relations that have the potential for negligence which results in losses. Civil negligence is divided into two forms, namely default and unlawful acts. The similarity of elements in both is that there is a loss suffered by the victim while the difference is in the nature of the act where in default, it is based on the existence of a transaction agreement between the business actor and the consumer while in the act against the law, there is "law" in the form of rights and obligations

between the business actor and the consumer which are not carried out resulting in losses. Indonesia itself has several regulations governing provisions regarding online-based transactions, namely Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, Law Number 7 of 2014 concerning Trade, and Law Number 7 of 2014 concerning Trade. Law Number 8 of 1999 concerning Consumer Protection. The legal consequences of unlawful acts in the field of e-commerce can also be resolved through lawsuits to the competent District Court or to the Consumer Dispute Settlement Agency through alternative dispute resolution. Meanwhile, criminally, perpetrators of unlawful acts in the e-commerce sector can be fined and imprisoned depending on the actions and losses that are causal.

Acknowledgments

This project is support by The Rector of Universitas Komputer Indonesia.

References

- [1] Li Zhao, Wenxing Zhen and Xiaodong Liu, The tort and legislative regulation of standard terms in shopping online between undergraduates, *International Conference on Innovations in Economic Management and Social Science*, Vol 29, Atlantis Press, 2017.
- [2] Erdem Büyüksagis, Extension of Strict Liability To E Retailers, *Journal of European Tort Law*, De Gruyter, 2023. ion of Strict Liability to E-Retailers Erdem Büyüksagis* Extension of Strict Liability to E-Retailers
- [3] Stefanus Gandi and Ida Sadnyini, Perspektif Hukum Tentang Perbuatan Melawan Hukum Dalam Transaksi Online Menurut Burgerlijk Wetboek Dan Undang-Undang Nomor 11 Tahun 2018, *Jurnal Ilmiah Indonesia*, 2022.
- [4] Ruli Agustin, Perlindungan Hukum Dalam Perjanjian Elektronik Pada *E-commerce* Shopee, *Skripsi Fakultas Syariah Dan Hukum Universitas Islam Negeri Syarif Hidayatullah*, Jakarta, 2020.
- [5] Deisy Lumentut, Dientje Rumimpunu, and Firdja Baftim, Perlindungan Hukum Terhadap Konsumen Dalam Transaksi Ecommerce, *Jurnal Lex Privatum*, IX.3, 2021.
- [6] Uni Sabadina, Politik Hukum Pidana Penanggulangan Kejahatan Teknologi Informasi Terkait Kebocoran Data Pribadi Oleh Korporasi Berbasis Online, *Jurnal Lex Renaissance*, 2021.
- [7] Hetty Hassanah, Analisis Hukum Tentang Perbuatan Melawan Hukum Dalam Transaksi Bisnis Secara Online (*E-commerce*) Berdasarkan Burgerlijk Wetboek Dan Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik, *Jurnal Wawasan Hukum*, 2015.
- [8] Roland C Goss, Recent Developments In E-Commerce Law, *Tort Trial & Insurance Practice Law Journal*, Volume 38 No. 2, American Bar Association, 2023.
- [9] Chory Ayu Sugesti, Ngurah Ardhya, and Muhamad Jodi Setianto, Perlindungan Hukum Terhadap Pelaku Usaha Online Shop Yang Mengalami Kerugian Yang Disebabkan Oleh Konsumen Di Kota Singaraj, *Jurnal Komunitas Yustisia Universitas Pendidikan Ganesha Program Studi Ilmu Hukum*, 2020.
- [10] Vira Aprillia Santoso, Legal Protection on E-Commerce Transactions: Problems and Challenges in Global *Business, Law & Society Review*, Volume 1 Issue 2, July 2021.
- [11] Indah Sari, Perbuatan Melawan Hukum (PMH) Dalam Hukum Pidana Dan Hukum Perdata, *Jurnal Ilmiah Hukum Dirgantara*, 2020.

Legal Consequences of Unlawful Act in E-Commerce

ORIGINALITY REPORT

8%

SIMILARITY INDEX

5%

INTERNET SOURCES

3%

PUBLICATIONS

5%

STUDENT PAPERS

PRIMARY SOURCES

1

jurnal.iainponorogo.ac.id

Internet Source

3%

2

Submitted to Universitas Komputer Indonesia

Student Paper

3%

3

jurnal.unissula.ac.id

Internet Source

2%

Exclude quotes Off

Exclude matches < 2%

Exclude bibliography On