

E-Commerce In Perdata Law (An Overview Of Problems And Solutions)

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Abstract: The development of technology is an unavoidable necessity. This affects all behavior especially in terms of online commerce (e-commerce). Ease is being a keyword. However, the risks and how to solve it, especially in civil law, is not clearly known. This paper aims to explain how the problems and solutions of online buying and selling according to civil law. This research is a kind of legal research which is also referred to as empirical law research. The results of this study are; there are some problems in online trading such as, the validity of the agreement, the guarantor institution, the clarity of consumers and security. While the solution in civil law that can be litigation or non litigation.

Index Terms: E-Commerce, Civil Laws

1 INTRODUCTION

The last decade is a phenomenon that has occurred and revolutionized almost all aspects of life especially in terms of transactions. Phenomenon is a technology that is often considered a solution for some people especially business actors. The advantages of this technology is evident when with the ease of technology is able to revolutionize the conventional payment system (cash) that has been running for centuries into electronic systems (non cash). In everyday life, the form of transaction use this technology can be seen in the form of electronic transaction (e-banking) through ATM, phone banking, internet banking and other as a new form of delivery channel to modernize every transaction. In Indonesia itself, E-Commerce or electronic transaction has been regulated in the Law of the Republic of Indonesia Number 11 Year 2008 on Information and Electronic Transactions, published in the State Gazette of the Republic of Indonesia Year 2008 Number 58, and Supplement to the State Gazette Number 4843. The ITE Law consists of 13 Chapter and 54 Articles. The sale and purchase transaction through internet is one of the embodiment of the above provisions. In this electronic sale and purchase transaction, the relevant parties therein, conduct legal relationships that are poured through a form of agreement or contract that is also made electronically and in accordance with the provisions of Article 1 number 17 of the Electronic Information and Transaction Law (ITE) Act No.11 of 2008, referred to as electronic contracts namely partial agreements made through electronic systems. E-commerce is basically a trading transaction between seller and buyer by using internet media. E-commerce not only provides convenience for consumers, but this development makes it easier for manufacturers to market products that have an effect on cost and time savings. Implementation of on-sale buying in practice leads to several problems such as a buyer who should be responsible for paying a certain amount of the product of his purchased product but not making a payment. For those who do not perform the responsibility in accordance with the agreed agreement may be sued by the party who feels aggrieved to receive compensation. The importance of legal issues in the field of E-commerce is mainly in providing protection to the parties who perform internet transactions. Therefore in 2008 Indonesia issued a special regulation that regulates internet transactions namely Undang-Undang number 11 of 2008 on information and electronic transactions or abbreviated UU ITE. Electronic contracts must also have the same legal force as the conventional contract, which binds the parties as those 18 paragraph 1 of the ITE Law which

states that "electronic transactions poured into electronic contracts are binding on the parties". There are also problems if when viewed from the civil law system, where legitimate buying and selling through the internet still can not be said to be valid in one of the legal requirements agreement is the ability of the parties in the conduct of sale and purchase transactions. Because in buying and selling online a person does not know whether the person is perfectly legal as set forth in article 1320 of the Civil Code.

2 REVIEW OF RELATED CONCEPT

2.1 Internet Network

Today, we have entered the third millennium era, marked by the information technology that introduces to us a virtual media (cyberspace) or the internet, which uses paperless documents. If we look at the history of internet development that around 1969 in the United States, formed computer networks at the University of California in Los Angeles, the University of California at Santa Barbara, the University of Utah and the Stanford Research Institute. The project received funding from the US Department of Land with the Advances Research Project Agency (ARPA). Network Advances Research Project Agency or ARPANET was designed to establish a system of Internet decentralization. Around 1983, the National Foundation of Science (National Science Foundation) expanded Arpanet to connect computers around the world. The Internet, including electronic mail (e-mail) that developed until 1994, at a time when science introduced the World Wide Web. His use of the web extends to business, industry and home activities stairs all over the world. Regarding the understanding of the internet, D.E. Corner (2003) writes in an electronic encyclopedia that, "Internet, computer based global information system. The Internet is composed of many interconnected computer networks. Each network may link tens, hundreds, or even thousands of computers, enabling them to share information with one another and to share computational resources such as asparagus supercomputers and databases of information."

2.2 E-Commerce As Paperless Transaction

The term of internet today is also known as the term cyberspace usually translated into Indonesian as cyberspace. The term Cyberspace is actually another term from the internet. Today, information technology deals with cyberspace (the world virtual) has been used in many sectors of life. According to Wiradipradja and Budhijanto. "The information

and technology system has been used in many sectors life, from commerce / commerce (electronic commerce / e-commerce) education (electronic education), health (tele-medicine), telecoms, transportation, industry, tourism, environment to sector entertainment" even now arise also for the field of government (e-government)." Regarding the definition of e-commerce, given information by Peter Scisco, that: "Electronic Commerce or e-commerce, the exchange of goods and services by means of the internet or other computer networks. E-commerce follows the same basic principles as traditional commerce - that is, buyers and sellers come together to exchange goods for money. But rather than conducting business in the traditional way - in stores and other "brick and mortar" buildings or through mail order catalogs and telephone operators - in e-commerce buyers and sellers transact business over networked Computers." Electronic Commerce or e-commerce, exchange of goods and services using the Internet or other computer networks. E-commerce following the same basic principles as traditional trade that is, buyers and sellers come together in exchange for exchange goods for money. But not as doing business in a traditional way - in shops and buildings." divided into units and groups" or through mail order catalogs and phone operators - in e-commerce buyers and sellers do business transactions through computer networks.

2.3 Electronic Sale and Purchase Agreement

a. Understanding Buy and Sell Electronics

In electronic buying and selling transaction, the related parties at depths of conduct of legal relationships poured through a form of agreement or contract that is also done electronically and in accordance with Article 1 point 17 UUIITE referred to as contract electronic agreement that is contained in an electronic document or other electronic media. With ease of communicating electronically, then trading at this time has begun to propagate into the electronics world. Transactions can be done with the ease of information technology, without any distance obstacles. Organizing electronic transactions can be done either in public or private sphere

b. The Parties in Electronic Sale and Purchase

In the world of e-commerce is known two actors, namely merchant / perpetrator the business that does the sales and the buyer / customer / consumer acting as buyer. In addition to business actors and consumers, within buying and selling transactions through internet media also involves providers as a provider of internet network services and banks as means of payment.

1) Consumer Rights and Obligations

a) Consumer Rights

If talking about consumer protection, that is it also discuss consumer rights. Consumer rights according to Article 4 of Law Number 8 of 1999 between other rights to comfort, security and safety in consuming goods and / or services and the right to choose goods and / or services and to obtain goods and / or tariffs in accordance with exchange rates and conditions and warranties promised.

b) Consumer Liability

Article 5 of Law Number 8 Year 1999 states the obligation of consumers, one of which is to read or follow the information

and procedures for the use or utilization of goods and / or services, for security and safety.

2) Rights and Obligations of Business Actors

a) Right of Business Actor

Article 6 of Law Number 8 Year 1999 states the right of the entrepreneur, namely the right to receive payment in accordance with the agreement on the condition and exchange rate of goods and / or services traded.

b) Obligations of Business Actors

Article 7 of Law Number 8 Year 1999 states the obligation of business actors, namely having good intentions in conducting their activities and providing correct, clear and honest information about the condition and guarantee of goods and / or services giving explanation on the use, repair and maintenance.

3 RESEARCH METHODS

This study used a qualitative descriptive method in order This research is a kind of legal research which is also referred to as empirical law research. This research is explanatory, so it should be explained the facts given as to be explained in the research. Sources of data in this study there are 2 (two) namely primary data and secondary data. The primary data obtained from the community that consists of respondents. While secondary data is data obtained through literature materials that include legislation, literature or archives of previous research and expressive documents such as newspapers and other media.

4. RESULT AND DISCUSSION

Problems in buying and selling transactions via the Internet (E-Commerce)

a. The validity of the agreement under Article 1320 of the Civil Code

Mentioned there are 4 terms of validity of an agreement are: agreement between two parties to bind themselves, the ability to make agreements, certain objects and a halal cause. E-commerce is a modern trading method that does not bring together salespersons and buyers, so for the occurrence of an agreement is difficult to know clearly when the agreement between the two sidesjadi. In addition to the skills of both parties also questioned because between the seller and the buyer did not meet directly, so can not be known clearly both parties are competent or not according to the Act. How to resolve this problem by making regulations that prohibit trade in goods in accordance with the law of positive law in Indonesia or enter into agreements between States on goods which may be traded in the world.

b. No agency guarantees the legitimacy of online stores

Company or online buying and selling account in cyberspace selling storesonline is very easy to set up compared to set up companies in the real world. As the fact that the establishment a company in the real world requires permission from officials / agencies related. But in establishing or building an online store in the world virtual just rent place in cyberspace and create web design online store on Internet Service Provider (ISP) then this online store can already operate like a store in the real world.

c. Transaction security issues related to legal certainty

Implications of the development of online buying and selling is felt there is a positive side and negative side. Negative aspect is the issue of security in transactions using ecommerce media and juridically associated also with the guarantee of certainty. The problem of security in question in this aspect is the issue of message confidentiality, the problem of how to send the transmitted message to the receiver, the validity of the transactor and the message authenticity in order to make evidence available.

d. The presence of unexplained consumers is clear

Given the existence of transactions made in cyberspace, so can be a possibility as the party who made the transaction may be parties that are not legally allowed to take action law.

e. Diversity regarding existing law and legal jurisdiction

Binding on both sides There is doubt about the existing law and the legal jurisdiction binding both parties conducting business or transactions. Where there are some who think or believe that the transaction takes place in cyberspace, then the law prevailing in the world virtual does not apply in the even though in some cases there is provisions that can be imposed in cyberspace. Given the above reality, there was a confusion about what laws can solve the problems that will arise in later days or existing ones. This is because the law is set about the e-commerce business via the internet yet there is a strong conception and legal legislation. Setting settings regarding the system of evidence to date there is no firm regulation. The law of evidence to date still uses the old law (BW, HIR, RBg).

2. Settlement of disputes in the sale and purchase transactions through the internet

In every job there are always 2 (two) kinds of legal subjects, each of which legal subjects have rights and duties in a manner reciprocity in the execution of the agreement he made. If one the subject does not carry out what should be done accordingly in the agreement then the act is said to be wanprestasi. In most cases there is a default business actor eg late to send the goods, wrong in sending products ordered goods, goods purchased not in accordance with information displayed or it could be a business actor intentionally intend not to fulfill its obligations. Consumer effort for demanding compensation can be done through:

a. Litigation

In accordance with Article 38 of the ITE Act which explains the parties may sue if in the conduct of electronic transactions harm the other side. With the recognition of electronic evidence as a tool valid evidence in court as mentioned in Article 5 paragraph 1, 2 and 3 of the ITE Act, then the evidence tools can be used by consumers in court is proof of transfer or proof of payment, SMS or message from the social media stating the agreement purchase, name, address, phone number and account number of business actor.

b. Non Litigation

In article 39 paragraph (2) of the ITE Act that explains that in addition to the settlement of a civil suit, the parties may resolve disputes through arbitration, or other institutions. Dispute resolution through non-litigation channels can be pursued through Non-Governmental Institutions Society,

Directorate of Consumer Protection Disperindag, Agency Consumer dispute resolution (BPSK) and business actors themselves kinship. Each of these legal entities has an approach different in solving existing cases.

5 CONCLUSION

Based on the analysis through the existing discussion, it can be concluded several things namely:

1. The sale and purchase agreement through internet must have the same validity as the conventional sale agreement. This is so long as it can be proven and fulfill the provisions in Article 1320 BW. The basis of validity is that if both agree and there is a word of agreement between the seller and the buyer in communicating about the offer and the type of goods and both have agreed on the existence of the agreement. Validity itself occurs at the time of the payment process in an agreement in which the payment may be paid directly or incur gradually from the agreed price. The Internet purchase agreement must also comply with the legitimate requirements of any agreement as contained in Article 1320 BW which may be prohibited and may not.
2. Settlement of disputes that occur in the online sale and purchase agreement if there is a disadvantaged party that is able to ask for compensation for wanprestasi, because the wanprestasi has hurt the other party. Top compensation Such default may be the fulfillment of the agreement, the fulfillment agreements and indemnities, ordinary damages, cancellation of agreements accompanied compensation. If the online sale and purchase agreement can be taken among others: through Litigation under Article 38 paragraph (1) of the ITE Act and through non-Litigation under Article 39 paragraph (2) of the ITE Act.

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