

Legal Review of Unlawful Acts in Internet Purchase Transactions (E-Commerce) Based on the Civil Code

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Abstract. *The advancement of information technology has significantly transformed the structure of community activities, particularly in the trade sector. Many individuals engaged in sales now utilize digital platforms for marketing, making the process more efficient and profitable. Traditional physical shops are gradually being replaced by online commerce. However, this rapid development also brings challenges, particularly in the form of unlawful acts that may harm other parties. Therefore, a legal solution is necessary to address, prosecute, and enforce the law in the electronic commerce sector. This is essential to ensure legal certainty for business actors and to resolve legal violations fairly and systematically. The background of this study refers to several legal frameworks, namely Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE), the Civil Code (KUHP), and Law Number 8 of 1999 concerning Consumer Protection. This research aims to serve as a valuable reference for the public to actively participate in e-commerce with a clear understanding of their rights and obligations. Furthermore, the study is expected to assist law enforcers in preventing, handling, and taking legal action against civil law violations by digital business actors. The results highlight the ongoing need for systematic efforts to educate the public comprehensively about e-commerce transactions and their legal protection through relevant laws, especially the UU ITE, KUHP, and Consumer Protection Law.*

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INTRODUCTION

Nowadays, the development of information technology is unstoppable. The Industrial Revolution 4.0 has brought about changes in the order of global society towards a more advanced and modern direction (Fadli, 2021; Rizqy et al., 2023; Noor, 2023). However, the advancement of information technology has positive and negative impacts on human life. Positive impacts are the dreams, ideals and hopes of anyone who can bring benefits or benefits to many people. According to Lindner et al. (2021), While the negative impacts are attempted to be minimized as much as possible.

Efforts and endeavors to minimize and prevent the occurrence of negative impacts from the advancement of information technology can be taken and carried out in various ways, methods and comprehensive approaches, one of which is through a legal approach. According to Urry (1985), there is a very close relationship between time, space and law. In this case, changes, progress and rapid development of technology cause the use of space which must certainly be followed by rules of conduct (legal rules) which can provide a sense of legal certainty.

Every country that experiences accelerated technological progress, in fact, must make anticipatory efforts so that the country does not lag behind other countries in terms of legal regulations or rules of the game due to the development of information technology (Fauzi et al., 2023). This is important as an effort to provide a balance between technological progress with time, space and legal regulations can be realized properly (Lescrauwaet et al., 2022). Therefore, the development of science and information technology which is marked by the existence of the internet today which has been widely used by the world community as a means to carry out various activities and unlimited activities, in fact can be responded to wisely.

No one should be lulled by the existing progress, but there must be comprehensive efforts to anticipate the negative impacts it causes. Anderson & O'dowd (1999) said that, what is important to note is that the internet makes the world seem like there are no more geographical boundaries between one country and another or between regions. This increasingly opens up opportunities for actions, both positive and negative. According to Atzori et al. (2012), this has been proven in recent years, where many cases that occur begin with interactions via the internet network.

In its history, the internet globally began only to be used to interact with each other through the exchange of information (Uimonen, 2003). However, in its development, the internet has experienced a development in function that is no longer limited to being a mere communication medium, but has also become an important instrument for carrying out commercial activities, such as marketing information, sales and product promotions needed by consumers. In this case, the internet has developed its function as a medium that is believed to be very effective in carrying out local, regional, national and global trade transactions (Meltzer, 2014).

This happens because the internet offers convenience at a low cost, quickly and efficiently. This makes the internet transform into an intangible asset (a very large asset) as befits an intellectual property (HAKI). In its development, internet-based business or trade transactions have given birth to a new term known as Electronic Commerce, a trading system that can be accessed and carried out by every individual to make transactions electronically with anyone, anytime and anywhere easily and quickly. From this term, there is a clear picture that transactions via the internet do not involve direct or face-to-face interaction between sellers and buyers, but are based on a foundation of mutual trust with each other (Bunduchi, 2005).

Not only that, internet transactions are sometimes not carried out through a legally binding agreement. The transformation of information technology in the trade sector, in the future, is very important to get attention in order to protect the public from unlawful actions from one of the parties who conduct electronic transactions (Rizkia et al., 2024). This is very crucial because in electronic transactions, the party who is harmed or who becomes a victim of a violation of the law will experience difficulties and obstacles in claiming the material losses they have experienced (Martinelli, 2023). Moreover, if later, the transaction via the internet occurs between people in different regions or countries. Handling a case such as internet fraud between regions or countries is very difficult to do, unlike handling local and conventional legal cases.

Based on the description above, it can be said that E-commerce is a type of transaction, both goods and services through electronic media. E-commerce usually has a model or form of B to B (Business to Business or Business for Business) or B to C (Business to Consumers). The form of e-commerce B to C is usually consumers are in a weak position, while companies are in a strong position (Baršauskas et al., 2008). In such conditions, the potential for legal problems is very large. Therefore, in the future it is very important to think about how to overcome legal problems when consumers are in a weak position. Consumer caution is indeed very important, but it cannot be denied that transactions via the internet have become a global phenomenon so that they should be anticipated with various adequate legal instruments to protect consumers (Oksidelfa, 2021).

The most vulnerable problems experienced by consumers are related to payment procedures (payment mechanisms) and security guarantees in transactions (security risk) (Kasiyanto, 2016). The phenomena and realities as described above, become one of the important instruments that become references to spark constructive thoughts as a comprehensive solution, in order to protect consumers. Align with research from Kirillova & Chawla (2022), the consumer protection solution is inevitable, because electronic transactions have become a trading model in the modern era that cannot be avoided, let alone stopped. Even in a matter of days, the electronic transaction model continues to develop through new, increasingly modern discoveries (Dewi & Kurniawan, 2022).

Therefore, the solution is to create a legal system that is able to keep up with the development of information technology that can be a solution to the negative impacts of the spread of e-commerce transactions in society (Martinsons, 2008). It should be underlined that e-commerce as a means of conducting business transactions today and in the future has the potential for violations of the law, so constructive thoughts are needed to spark a formulation of law enforcement so that in conducting electronic transactions, society has legal certainty. Electronic transactions are not enough to rely only on the aspect of "mutual trust", but more than that, legal considerations are needed.

After all, e-commerce has a positive impact on increasing economic growth and community income that is relevant to the ideals of the nation's struggle (Jula et al., 2024; Otarinia, 2024). Therefore, the negative impacts caused by e-commerce can be anticipated with legal instruments to minimize the potential for violations of the law. Based on this understanding, it is hoped that this legal study can encourage the birth of constructive thoughts to answer various questions regarding unlawful acts that occur due to e-commerce that could arise and harm society, especially consumers. In this context, as a country of law, Indonesia actually provides space for the community to ask for legal protection if they become victims of unlawful acts in any form.

Moreover, with the spread of e-commerce transactions, society is faced with a choice through the digital transformation that has spread, not only in urban communities, but also to remote villages. Based on the description above, it can be concluded that the writing of this legal journal discusses "What are the Legal Consequences of Unlawful Acts in Sales and Purchase Agreements via the Internet (E-Commerce)?"

METHODS

This type of research is legal research, namely research that examines laws and regulations, namely 'Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE), the Civil Code (KUHP) and Law Number 8 of 1999 concerning Consumer Protection. in a coherent legal system. In this case, law as a positive norm that applies at a certain time and is issued as a product of a certain political power that has legitimacy. Legal research is a series of actions or processes to find the law due to the incompleteness of the rules (uncompletely norm) in regulating the implementation of fiduciary guarantee execution or finding the principle of legal certainty. Including the model of granting authority and equal position and for the recipient to secure the execution. Legal research is conducted using legal materials as the main reference, both primary legal materials and secondary legal materials. The problems and objectives of legal study research describe the ideal and legal realm (philosophy, legal principles, legal rules, logic, systematics, and basic understanding of law).

RESULTS AND DISCUSSION

According to Black's Law Dictionary, a contract can be defined as an agreement between two or more individuals. This agreement creates an obligation to do or not do something, even if only partially. The essence of the definition in Black's Law Dictionary is that a contract is seen as an agreement between the parties involved in carrying out obligations, either in the form of actions or prohibitions. R. Subekti explains that an agreement is a situation in which someone

promises to another person, or two people promise each other to do something. Meanwhile, Charles L. Knapp and Nathan M. Crystal define an agreement as an agreement between two or more people that not only creates trust but also mutual understanding to carry out an action in the future by one or both parties. The relationship between the two individuals produces a bond in the form of rights and obligations towards an achievement.

Summers (1969) defines an agreement as a legal relationship between two or more parties based on an agreement to create legal consequences. An agreement is considered a legal relationship because it involves two legal actions carried out by two or more people, namely the act of offering and the act of accepting. In Article 1457 of the Civil Code, it is explained that a sale and purchase is an agreement in which one party is willing to hand over an item, while the other party is committed to paying the agreed price. Thus, according to the Civil Code, a sale and purchase is a reciprocal agreement in which one party (the seller) promises to hand over ownership rights to an item, and the other party (the buyer) promises to pay a sum of money in return for the ownership rights (Hidayati & Erma, 2023).

The sale and purchase agreement in the Civil Code stipulates that the object of the agreement must be clear, or at least the form and quantity can be determined at the time of transfer of ownership rights to the buyer. In addition, the Civil Code recognizes three categories of goods: movable goods, immovable goods (fixed goods), and intangible goods such as receivables or claims. Based on the Preamble to the 1945 Constitution, paragraph four, which states: "To form an Indonesian state government that protects the entire Indonesian nation..." This is the legal basis for protecting all Indonesian people, including those involved in certain legal transactions such as electronic sales and purchases. Internet buying and selling transactions are carried out without physical meetings between the parties involved. This transaction is built on the basis of mutual trust, so that the agreement between them is carried out electronically, either via email or other methods.

Therefore, there is no agreement document like in conventional buying and selling transactions. Moreover, every time new technology emerges in cyberspace, while protection and legal certainty for internet users are still inadequate. Therefore, there needs to be an effort to maintain legal balance in this condition. Electronic buying and selling transactions cannot be separated from the basic concept of an agreement stated in Article 1313 of the Civil Code, which emphasizes that an agreement is an act in which one or more people bind themselves to one or more other people. Provisions regarding agreements are regulated in Book III of the Civil Code, which is open, meaning that its provisions can be set aside, so that they only function as regulators.

This open nature is reflected in Article 1338 paragraph (1) of the Civil Code which contains the principle of Freedom of Contract, which means that everyone has the freedom to determine the form, type and content of an agreement as long as it does not conflict with applicable regulations, morality and public order, and always pays attention to the conditions for the validity of an agreement as stated in Article 1320 of the Civil Code. which contains the principle of Freedom to enter into a contract agreement. meaning that everyone is free to determine the form, type and content of an agreement as long as it does not conflict with applicable laws and regulations, morality and public order, and always pays attention to the conditions for the validity of an agreement as stated in Article 1320 of the Civil Code which states that the conditions for the validity of an agreement are as follows: (1) Agreement of the parties in the agreement; (2) Competence of the parties in the agreement; (3) A certain thing; (4) A lawful cause.

Agreement indicates the harmony of will between the parties involved in an agreement. Therefore, in the implementation of the agreement, there must be no elements of coercion, error, or fraud (*dwang, dwaling, bedrog*). Legal capacity is one of the requirements for the validity of the agreement, which means that the parties involved in the agreement must have reached adulthood, which is at least 18 years old or married, and have good mental health and be

permitted by law. If a minor wants to make an agreement, they can be represented by their parents or guardians. Meanwhile, individuals who are mentally disabled can be represented by a guardian or appointed curator (Perlin, 2012). Certain matters referred to relate to the object of the agreement, namely that the object must be clear, identifiable, and the type and quantity must be counted. In addition, the object of the agreement must be in accordance with the provisions of the law and allow it to be implemented by the parties.

Regarding a legitimate cause, this means that the agreement must be carried out in good faith. In accordance with Article 1335 of the Civil Code, an agreement that does not have a clear cause will not have legal force. In this context, because refers to the purpose behind making an agreement. Referring to the provisions of Article 1 number 2 of the Law on Information and Electronic Transactions (UU ITE), electronic transactions are defined as legal actions carried out through the use of computers, computer networks, and/or other electronic media. Electronic buying and selling transactions are one concrete form of this provision. In electronic transactions, the parties involved establish a legal relationship that is stated in the form of an agreement or contract that is also carried out electronically. According to Article 1 number 17 of the ITE Law, an electronic contract is an agreement contained in an electronic document or other electronic media.

When viewed from the parties involved, between electronic buying and selling transactions or e-commerce and offline transactions or in the real world, they basically have similarities. The difference is, if in e-commerce, the parties do not meet, but conventionally the parties meet. Based on this, in electronic buying and selling transactions, the parties involved include..." (Zainul et al., 2004): (1) The seller or entrepreneur who has a product that is sold via the internet; (2) The buyer or consumer, namely any person who is not prohibited by law, who receives an offer from a seller or business actor and wishes to carry out a buying and selling transaction of the product offered by the seller/business actor/merchant; (3) The bank as the party distributing funds from the buyer or consumer to the seller or business actor/merchant, because in electronic buying and selling transactions, the seller and buyer do not meet directly, because they are in different locations so that payment can be made through an intermediary in this case a bank; (4) Provider as a provider of internet access services.

Electronic buying and selling transactions are legal relationships carried out by combining a network of computer-based information systems with a communication system based on telecommunications networks and services. The legal relationship that occurs in electronic buying and selling transactions does not only occur between entrepreneurs and consumers, but also occurs between the following parties: (1) Business to business, is a transaction that occurs between companies, in this case, both the buyer and the seller are a company and not an individual; (2) Customer to customer, is a buying and selling transaction that occurs between individuals as sellers and companies as buyers; (3) Customer to government, is a buying and selling transaction carried out between individuals and the government, for example in paying taxes.

Basically, the e-commerce transaction process is not much different from the ordinary buying and selling transaction process in the real world. The implementation of this electronic buying and selling transaction is carried out in several stages, as follows: (1) Offers made by sellers or business actors through websites on the internet. Sellers or business actors provide a storefront containing a catalog of products and services to be provided. The public who enter the business actor's website can browse the goods offered by the seller. Offers via the internet can only occur if someone opens a site that displays an offer via the internet; (2) Acceptance, can be done depending on the offer that occurs. If the offer is made via e-mail address, then acceptance is done via e-mail, because the offer is only addressed to an e-mail address so that only the holder of the e-mail is addressed; (3) Payment, can be made either directly or indirectly, for example via internet facilities, but still relies on the national financial system, which refers to the local financial system.

Classification of payment methods can be classified as follows: (1) ATM model transactions; (2) Two-party payments without intermediaries; (3) Payment through a third party, generally a payment process involving debit, credit or checks. Shipping, is a process carried out after payment for goods offered by the seller to the buyer, in this case the buyer has the right to receive the goods. In reality, the goods that are the object of the agreement are sent by the seller to the buyer with shipping costs as agreed between the seller and the buyer. In an internet sales agreement, there are legal aspects that must be considered seriously, namely the contract, witnesses and the trading mechanism carried out.

Regarding this, there are 2 (two) main principles that must be considered, namely the principle of function equivalence and the source of law: (1) The principle of function equivalence determines that considering the principles of trade that occur in the real world, which are more or less the same as transactions in the real world, there should be a legal device that can anticipate all trading needs on the internet as has been effectively done in conventional types of trade; (2) The source of law is another problem that must be considered, because cyberspace does not have geographical boundaries that have been known in conventional law. If a violation of the law occurs, it is very difficult to determine which country's law will be used, considering that in terms of mechanism, the parties and means / facilities of trade can at one time be in a number of different countries, unless previously the parties to the transaction have agreed to use the legal system of a particular country, if there is a violation of the sales agreement.

In a legal event including e-commerce transactions, there is a possibility of violations committed by one or both parties and the violation of the law may be categorized as an unlawful act (*onrechtmatigedaad*) as stipulated in Article 1365 of the Civil Code. An unlawful act here is against civil law. Because, for unlawful acts under criminal law (*delict*) or crimes/criminal violations have different meanings and legal regulations. In Continental European countries, for example the Netherlands, the term "*Onrechtmatige Daad*" is known, or in Anglo Saxon countries it is known as "*tort*". The definition of an unlawful act is an act committed by a person or legal entity which due to their fault has caused harm to another person.

In legal science, there are 3 (three) categories of unlawful acts, namely: (1) Unlawful acts due to intent (Article 1365); (2) Unlawful acts without fault/without elements of intent or negligence (Article 1366); (3) Unlawful acts due to negligence (1367). The Indonesian civil law system recognizes two main types of lawsuits: unlawful acts and breach of contract. The legal basis is found in Articles 1365 and 1367 of the Civil Code (KUHPerdata). Article 1365 of the Civil Code states that any unlawful act that harms another person requires the perpetrator to compensate for the loss. Meanwhile, Article 1367 of the Civil Code regulates the employer's responsibility for losses incurred by employees or subordinates in carrying out their duties.

Unlawful acts can be defined as actions that: conflict with the rights of others; violate legal obligations; conflict with moral norms; or conflict with applicable social rules. This includes negligence that harms others, violates legal obligations, conflicts with morals, or violates norms of decency in social interactions related to other people or goods. Unlawful acts are determined based on the existence of a violation of the law, violation of the rights of others, violation of the perpetrator's legal obligations, violation of morality and public order, or violation of norms of decency in society. However, liability for such acts depends on the existence of an element of fault. Exceptions to liability for unlawful acts include emergencies (*noodweer*, *overmacht*), the exercise of legitimate personal rights, official orders, or excusable errors.

If the element of fault is proven, the perpetrator is responsible for the losses incurred, including losses due to the fault of the person he is responsible for. In addition to fault, Article 1365 of the Civil Code requires a causal relationship between the unlawful act, the fault, and the losses suffered. The losses that can be replaced are only losses that are directly caused by the unlawful act. Article 1365 of the Civil Code is also the basis for a lawsuit for compensation for unlawful acts in e-commerce transactions, either through litigation (court) or non-litigation (negotiation, mediation, conciliation, arbitration). Since online transactions are cross-border in

space and time, the choice of law can be determined by the initial agreement or law agreed upon by the parties, especially if it involves foreign nationals. Article 28 of Law Number 4 of 2004 concerning Judicial Power emphasizes the obligation of judges to consider social values, so that no case is rejected simply because of a lack of regulation. Therefore, cases of unlawful acts in electronic transactions can be resolved based on applicable law.

The Electronic Information and Transactions (ITE) Bill, especially Article 34, allows for class action lawsuits on behalf of the public who have been harmed by the use of information technology. This lawsuit is permitted if the number of victims is so large that individual lawsuits are ineffective, and if the representative group has the same interests and demands as those they represent. The lawsuit can include compensation, restoration of public order and morality, and repair of damages. The lawsuit can also ask the perpetrator to improve public services. Article 35 of the ITE Bill emphasizes that civil lawsuits are based on applicable laws and regulations, and dispute resolution can be carried out alternatively outside the courts. The injured party can choose to resolve the dispute through litigation (court) in accordance with Indonesian civil procedure law or agreed law, or through non-litigation (adaptation, negotiation, mediation, conciliation, arbitration). This option is usually stated in the agreement. If there is no initial agreement, the parties must agree on a dispute resolution method.

Settlement of litigation requires a court decision that has permanent legal force. Non-litigation settlement offers an alternative outside the courts: (1) The process of adaptation of the agreement between the parties as stated in the sale and purchase agreement made through the internet media. The purpose of this adaptation is that the parties can agree and jointly change the contents of the agreement that has been made, so that the actions of one party that were originally considered to be unlawful acts are ultimately no longer unlawful acts; (2) Negotiation, which can be carried out by the disputing parties, either directly or through representatives of each party; (3) Mediation, is one way to resolve disputes outside the court, with the intermediary of a third party/mediator who functions as a facilitator, without interfering with the decisions taken by both parties; (4) Conciliation, is also a way to resolve disputes outside the court, but similar to a real court, where there are parties who are considered as pseudo judges; (5) Arbitration, is a way to resolve disputes non-litigation, with the help of arbitrators appointed by the parties according to their fields.

In Indonesia, there is a special arbitration institution, namely the Indonesian National Arbitration Board (BANI). An arbitration decision has the same legal force as a judge's decision in court, and no legal action can be taken either by appeal or cassation. Therefore, unlawful acts arising in electronic/internet buying and selling transactions can be resolved either through litigation or non-litigation, according to the agreement of the parties, so that there is no legal vacuum that could result in even greater losses.

CONCLUSION

The conclusion of this study shows that online buying and selling transactions (e-commerce) remain subject to the rules of contract law, especially agreements as stated in the Civil Code. E-commerce is basically an extension of the concept of conventional buying and selling. Unlawful acts in online buying and selling transactions can be resolved legally by referring to Article 1365 of the Civil Code. Although there are no specific regulations for online activities, including online buying and selling transactions, Article 1365 of the Civil Code can be applied through broad legal interpretation and legal analogy to avoid legal vacuums. This finding urges the government to immediately formulate, ratify, and implement regulations governing cyberspace activities in response to the development of information technology.

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