

## **Islamic Perspective In Consumers Protecting Of E-Commerce Transactions In Indonesia**

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### **ABSTRACT**

Electronic transaction mechanism in Indonesia often cause losses to consumers. Consumer protection should be applied in all conditions in transactions, both in conventional and manual transactions. But with the development of the electronic world, the public questions whether electronic transactions held in electronic systems can protect their rights as consumers. How Islamic Law and Government Regulation No. 82 of 2012 on the Implementation System and Electronic Transactions can be set, and protect the rights of consumers who transact in e-commerce? The method used is the type of normative juridical research, the research focused on reviewing the application of the rules or norms of positive law. Results of the discussion are: e-commerce, can make consumers impressed and interested in buying goods that are marketed. It also became one of the reasons consumers prefer to shop via the Internet. But ignorance of the agreement in e-commerce transactions is as proof of legal agreements often make prospective customers do not dare to carry out a transaction and choose to cancel the transaction because it feels it will be very detrimental and cannot be prosecuted if the business actor defaults or is against the law. So in this paper we will discuss how the laws and regulations relating to ITE can protect the rights of consumers in e-commerce purchases.

**Keywords:** Islamic Perspective, Consumer Protection, E-Commerce Transactions

### **A. INTRODUCTION**

Trading activity in the community has grown far beyond that envisaged. It is influenced by the development of internet-based technology known as e-commerce (Kienan, 2001: 4). E-commerce is a form of trade that has its own characteristics, the development of the internet has changed the concept of buying and selling where the process of buying and selling transactions can be carried out between

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sellers and buyers without the need for the two to meet each other directly (Suhariyanto, 2013: 3)

This new type of transaction has wider scope for choosing goods and / or services (Perdana, 2013: 45). These conditions on the other hand greatly benefit consumers, because they have many options for getting goods and services but on the other hand a violation of the right - very risky consumer rights occurs because of the characteristics of a typical e-commerce. The main objective of the process is to facilitate technology development activities and human activities. The internet has become one of the advancements in the field of technology that has developed so rapidly and includes various aspects, including the process of fulfilling the needs carried out by buying and selling transactions. An adequate legal basis is needed so that the practice of buying and selling online gets legitimacy and can be legally justified.

Legal protection for the parties, especially consumer protection for online shopping, became the main concern in organizing electronic transactions as stipulated in Law No. 11 of 2008 concerning Information and Transactions and Electronics, and strengthened in Government Regulation No. 82 of 2012 on the Implementation System and Electronic Transactions.

The concept of consumers in Islamic law can be associated with the concepts of property, rights and ownership both carried out by the existence of transactions in advance or not. Definition of consumer in accordance with the principles of consumer protection in Islam as interpreted by Muhammad and Alimin in his book, *Ethics and Consumer Protection in Islamic Economics*. is "any person, group or legal entity users of a property or service for their legitimate rights, whether it is used for end use or for further production process" (Muhammad Alimin, 2008: 130), (Fitria 2017 : 60).

The jurisprudence 'gives a definition of buying and selling salam differently. Hanafiyah defines buying and selling salam is buying something given later with payment now. (Syaichoni, 2015:223) Among jurists' Malikiyah define and selling salam with sale and purchase contract by doing something that is still in a dependent. Jurists' Syafi'iyah defines salam as the sale and purchase of goods which are determined by their dependents (Abd Al-Rahman Al-Jaziri, Jus 2:203).

Legal problems that arise are legal aspects of the agreement. Where the legal aspects of the agreement was the basis to determine whether the transaction process is legitimate or not, are also needed in the proof in the event of default. The existence of an electronic contract as stipulated in Article 18 (1) of the ITE Law is

recognized and has the same position as a conventional sale and purchase contract. Through this electronic contract, the consumer can sue businesses if disputes arise in the future due to the electronic transaction. Given the vast cyber world and tend to be affordable, appropriate mechanisms for resolving disputes between the parties is through the Alternative Dispute Resolution (ADR).

Therefore in the paper we will discuss more broadly the protection of consumer rights in purchasing on e-commerce in the review of laws relating to ITE. Based on the background of the problem, then the problem will be identified in this paper are : How Islamic Law and Government Regulation No. 82 Year 2012 on the Implementation System and Electronic Transactions can manage and protect the rights of consumers who trade in e-commerce? So that a reference in the developing of consumer protection laws on e-commerce transactions in Indonesia.

## **B. METHOD**

This research will be compiled using a type of normative juridical research, namely research focused on examining the application of rules or norms in positive law (Soekanto dan Mamudji, 2011 : 12),and also in journals (Languyu,2015 : 95). Normative juridical approach that uses legis positivist conception. It saw identical legal norms made written and promulgated by an agency or an authorized officer. This conception of viewing the law as a normative system which is independent, introverted and detached from the real life of society. This study uses a statute approach and a case approach.Law approach is used to determine the overall rule of law.

## **C. RESULTS AND DISCUSSION**

### **Consumer protection in e-commerce transactions in Indonesia**

The mechanism of electronic transactions in Indonesia often causes losses to consumers. One form that causes loss is loss due to credit card payments made by someone other than its owner. The disadvantaged consumer is the owner of the credit card whose funds are used without his knowledge. Another case is the implementation of the obligations of business actors that are not in accordance with the promises offered. This is experienced by consumers who want to buy electronic equipment, cameras, computers, cellphones, at prices cheaper than they should, apparently having to bear the loss of losing money without getting the goods promised in the offer, even though they have fulfilled the obligation to send money to purchase goods.

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These cases arise due to: (a) Ease the mechanism of electronic transactions that can be done by anyone (with a very diverse identity) which can access the Internet, so that aspect of protection on the implementation of the transaction is not a major consideration and; (b) Lack of awareness of the parties' rights and obligations arising from electronic transactions are conducted mainly on consumer protection for electronic transactions (e-consumer) as the weaker party than an entrepreneur.

Attractive sales style in e-commerce, can make consumers impressed and interested in buying goods that are marketed. It also became one of the reasons consumers prefer to shop via the Internet. But many do not know if the condition slowly - the land has been accompanied by a legal instrument governing the protection of consumer rights in making transactions via the Internet that is charged to businesses or run the e-commerce.

### I. Al- Qur'an

Word of Allah (QS. Al-baqarah: 275): Meaning: *"...But Allah has permitted trading and forbidden usury."*

### 2. Hadith

Ibn Abbas said: "I testify that the contract *salaf (salam)* which is borne up to a certain time has been permitted and allowed by Allah in His book. Then he read QS. Al-Baqarah (282): Meaning: *"Those who believe, if you are not in cash bermu'amalah untuk waktu specified, you should write:..."*

### 3. Ijma'

Base on Ijma' theologian, Ibnu Mundzir said, (Sayyid Sabiq, *Fiqh Sunnah*, 2008:325): *Theologians who know ijma' that contract salam is allowed because the public needs. Plant owners, fruits and merchandise need a living for their needs or for their crops and the like until the plants mature, so the contract salam permissible for them to meet those needs."*

Based on the legal basis of buying and selling *online* has been described previously in chapter two, then the form of consumer protection in the *online* trading can be divided into several sections. The following forms of consumer protection in the online transaction in (Nurmasiyahziahuddin, 2017:116), Islamic law: Prohibition of fraud, cheating, and elements *Gharar*. Based on the word of Allah SWT in al-Quran surah Al-Muthaffifin:

Meaning: *"Big accidents for people who cheat. (They are) people who, when receiving the dose from others demand full. And if they measure or weigh for*

*others, they reduce. Neither do they think that they will be resurrected. On a great day. (It is) the day (when) people are standing facing the Lord of the Worlds "*

In the paragraph explains that in trade or business both traditionally and modernly there must be no element of fraud and fraud that can harm one party. The purpose of those who cheat here are those who cheat in measuring and weighing. In a hadith narrated from Abu Hurairah, which reads:  
Meaning: *"From Abu Hurairah ra, he said "The Prophet forbade buying and selling by throwing stones and buying and selling gharar (the price, item, time and place are not clear)"*

Then Director General of Resources Post and Information (SDPP) The Ministry of Communications and Information Technology Budi Setiawan stated development in technology is developing very rapidly in the world including Indonesia by reaching the third rank in Asia for the number of internet users. As many as 44.6 million users of Facebook and 19.5 million Twitter users in Indonesia. Indonesia is the fifth largest Twitter user under Britain and other major countries. Indonesia's population of 245 million Internet users in Indonesia reached 55 million people or 22.4% dominate Asia after Japan.

While the E-commerce data from the Association of Indonesia (IDEA) noted, total online business transactions in Indonesia in 2013 reached Rp80 trillion. Half of these transactions occurred in Jakarta, which reached Rp30 trillion. Daniel Tumiwa as Country Manager of PT Multiply Indonesia said that it is estimated that in 2015 it will increase by 10 times. According to data and facts from a number of these findings, it can be said that, now the tendency of the Indonesian people to carry out various activities, especially promotions and transactions (product offers / shopping), is via the internet (e-commerce transactions continue to increase -Your choice-now /, accessed on May 10, 2016).

In the agreement there is an electronic document, usually the document is made by the merchant which contains rules and conditions that must be obeyed by the customer but the contents do not burden the customer. These rules and conditions are also used as legal protection for both parties. The legal protection for both parties is :

- a. Legal protection for merchant particularly stressed in terms of payments, merchants require customers to make full payment and then make a payment confirmation, only then it will be shipping goods ordered.
- b. Legal protection for the customer lies in the guarantee in the form of return or exchange goods if the goods received tidaksesuai which order.

- c. Privacy of electronic media user's personal data should be protected by law. The provision of information must be accompanied by the consent of the owner of the personal data. This is a form of legal protection for the parties to conduct e-commerce transactions, contained in Article 25 of Law ITE "Electronic Information and / or electronic documents are organized into intellectual works, internet sites, and intellectual works in it are protected as intellectual property rights under the provisions of the legislation" (Putra, 2014:229).

Consumer protection itself according to article 1 paragraph (1) UUPK states "Consumer protection is all the effort that guarantees the legal certainty to provide protection to consumers" Therefore to guarantee the implementation of rights protection (Barkatullah 2007: 264) consumers, the government strengthened the ITE Law by giving birth to PP No. 82 of 2012 concerning the Implementation of Systems and Electronic Transactions.

Some provisions in the Act No. 11 of 2008 on Information and Electronic Transactions mandates further adjustment in government regulations, the arrangements regarding Reliability Certification Body as referred to in Article 10 paragraph (2), Electronic Signatures as defined in Article 11 paragraph (2), organizer electronic certification referred to in Article 13 paragraph (6), Organizers Electronic Systems as referred to in Article 16 paragraph (2), Implementation of Electronic Transactions referred to in Article 17 paragraph (3), organizer of Electronic Agent as referred to in Article 22 paragraph (2), and management of Domain Names as referred to in Article 24 paragraph (4) (General part of PTSE PP). From the aforementioned additional arrangements, they all refer to how the government indirectly interferes in the protection of consumer rights, namely by tightening the obligations for these business actors in electronic transactions. The reason is that the government will not be able to protect these consumers if there is no transaction that raises an agreement, in which the agreement is a legitimate legal act.

Constitution Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law) and Government Regulation Number 82 of 2012 concerning Implementation of Electronic Transactions and Systems (PP PSTE) does not explain what is meant by legal actions so that the definition of legal actions in this paper refers to opinion Prof. Sudikno Mertokusumo (Mertokusumo, 2010:63), which states that, "legal actions are acts of legal subjects intended to cause legal consequences deliberately desired by legal

subjects". Moderate understanding of the legal consequences according to Prof. Satjipto Rahardjo (Rahardjo, 2006:36-37) is, "the continuation of legal actions arising from legal events, which will give rise to rights and obligations on legal subjects who do it". Based on this opinion, the understanding of electronic transactions is discussed more or less as follows, "the actions of the parties (in this case business actors and consumers), which are carried out with the aim of generating rights and obligations that must be fulfilled, as a legal consequence of an agreement between the consumer and the perpetrator business carried out through electronic media through display on its webpage, and business actor's approval to fulfill the promises mentioned in the offer.

Your agreement to buy goods online by clicking on the approval of the transaction is a form of acceptance that expresses agreement in the agreement on electronic transactions. The acceptance action is usually preceded by an agreement statement on the terms and conditions of online buying and selling that we can also say as one form of **Electronic Contract**. (Article 47 paragraph (1) and Explanation of Article 47 paragraph (1) PP PSTE)

Then the Electronic Contract in accordance with Article 47 paragraph (2) PP PSTE considered valid if:

- a. there is agreement between the parties;
- b. performed by legal subjects who are competent or who are authorized to represent in accordance with the provisions of the legislation;
- c. there are certain things; and
- d. the object of the transaction must not conflict with laws and regulations, decency and public order.

After an electronic contract is agreed upon, consumers need a security system on the internet as a form of embodiment of protection for consumers in conducting e-commerce transactions. Information technology has changed the ways of transacting and opening up new opportunities in conducting business transactions. However, the information technology also creates new opportunities for crime. Consequently, electronic information requires strong protection against efforts made by irresponsible parties to access the information. Such protection needs become very high when it comes to very confidential electronic information (Sjadeini, 2001:310).

The rule governing the protection of e-consumers in the form of a logo Trustmark provides legal kepastiaan to e-consumers in determining the choice to conduct transactions with businesses. Legal certainty contains two meanings

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(Marzuki, 2009:157-158) namely: *first*, the existence of rules that are general in nature, which make individuals know an act is allowed or prohibited; *second*, legal security for individuals from government (state) arbitrariness, security is obtained from the general rules so that individuals know what the state can charge individuals and outside of these things, the state has no right to burden individuals or society. Information security is a very important part and e-commerce system. The level of information security that is acceptable in e-commerce is absolutely necessary (Syawali dan Imaniyati, 2000:63).

In addition to security, what needs to be remembered is that electronic transactions are transactions in a system, which will be very different if we transact directly between humans. In this case, it would be nice if there were choices used by customers such as: selection will proceed with the transaction or not, to change your preference, or even do not want to continue the transaction. So that Electronic Agents must load or provide features in order to protect user rights according to the characteristics of the Electronic Agent they use (Article 35 paragraph 2 PP no. 82 of 2012). The features as referred to in paragraph (2) can be in the form of facilities for:

- a. make corrections;
- b. countermand;
- c. provide confirmation or reconfirmation;
- d. choose to continue or stop executing the next activity;
- e. view the information submitted in the form of a contract offer or advertisement; and / or
- f. check the status of successful or failed transactions.

Until the consumer completes his choice and approves what is offered by the electronic system, then at that time electronic transactions produce an electronic agreement. The agreement referred to must contain at least (Article 36 paragraph 2 PP no. 82 of 2012) :

- a. rights and obligations;
- b. responsible;
- c. complaint and dispute settlement mechanism;
- d. time period;
- e. cost;
- f. coverage; and
- g. ensuring privacy and / or protection of Personal Data.



Having reached the final stage of the transaction, then the consumer will be signed digitally or manually signed. Then the parties can carry out their obligations and get their rights. The importance of signatures in electronic transactions will give rise to the legal consequences of the use of certified or non-certified Electronic Signatures that affect the strength of proof value. Electronic Signatures that are not certified still have strength though relatively weak probative value because they can be denied by the person concerned or relative can be easily modified by other parties.

In practice, it is necessary to pay attention to the strength range of evidentiary values of Electronic Signatures which have weak evidence, such as scanned manual signatures to Electronic Signatures up to the most powerful proof of Electronic Signatures, such as Digital Signatures issued by certification providers. certified electronics (Article 58 paragraph I PP no. 82 of 2012).

The articles in Government Regulation number 82 of 2012 which have been mentioned previously greatly strengthen the ITE Law which indeed already exists but is considered insufficient in accommodating electronic transaction activities. But even then UU ITE has explained in several articles in terms of protecting Consumer Rights, just not yet elaborated specific. As in Article 5 paragraph (I) which reads electronic information and / or electronic documents and / or the printouts are legal legal evidence. Then Article 18 paragraph (I) electronic transactions poured into electronic contracts bind the parties. Article 28 paragraph (I) which reads every person intentionally and without rights to spread false and misleading news that results in consumer losses in electronic transactions. Acts as described in Article 28 paragraph (I) of the EIT shall be sentenced to imprisonment of 6 (six) years and / or a fine of Rp I billion (Article 45 paragraph (2) UU ITE).

#### **D. CONCLUSION**

From the discussion above, it can be concluded: The protection of consumers' rights as e-commerce customers can be given in terms of legal certainty contained in the laws and regulations that regulate online shopping, namely Law No. 11 of 2008 concerning Information on Electronic Transactions and also Government Regulation Number 82 of 2012 concerning Electronic Systems and Electronic Transactions. The existence of an electronic contract as stipulated in Article 18 (I) of the ITE Law is recognized and has the same position as a conventional sale and purchase contract and Islam also prohibits online buying and

selling, so this becomes a threat for regulation so consumers can be protected if fraud occurs. Through electronic contracts, consumers can sue a business actor if a dispute arises due to the electronic transaction. Besides that in PP No. 82 of 2012 also explained about the protection of consumer rights more fully, which focuses on e-commerce business actors to design electronic systems in such a way that a good contract can be established in transactions that will produce electronic contracts to fulfill the rights and obligations of the parties referring to Article 47 paragraph (I) of the Regulation. There needs to be socialization that consumers have basic rights that are protected by statutory regulations. There needs to be socialization that consumers have basic rights that are protected by statutory regulations.

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