

# The Criminal Law of the Consumer Protection on Sale Buy Online Through Mass Media

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**ABSTRACT**--*The era of globalization does not rule out opportunities for change and development. By developing technology, it will directly change the pattern of life as well as the culture and dignity of the nation. In the world of world-scale trading more and more utilizing internet facilities, one of which is in online buying offers (e-commerce). Where the transaction activity is certainly through online media. In this case we also need to discuss the law so that the rights and obligations of both parties are guaranteed, the consumer's legal mandate is in conflict, because the compilation of bold transactions is done through social media carried out as mutual trust between sellers and buyers. The approval method used by the author in discussing this law is juridical-normative supported by empirical research. Juridical is used to find data used to obtain data in the field relating to the protection of criminal law, while normative juridical is used to search for secondary data relating to legal protection for online buying and selling (e-commerce) negotiations. Licensing Legal Policies that Protect Consumers Included in the ITE Law, the Consumer Protection Act, the Criminal Code, and Law No. 7 of 2014 concerning Trade. Furthermore, it discusses law enforcement in implementing law against consumers in buying and selling online, among others, in discussions about positions that support the debate and to open accountability data related to banking security, as well as evidence that is difficult to find again*

**Keywords:** *aspects of criminal law, consumer protection, online buying and selling, social media*

## I. INTRODUCTION

With the advent of the internet world, distance and time are no longer a barrier for everyone to do activities. In addition to communicating, the internet has evolved to be a place for business. Online trading transactions through the internet media are basically the same as buying and selling transactions in general. Here the capital is only mutual trust between seller and buyer. Businesses in running their business through social media (internet) no longer rely on conventional real company business systems.

Given such phenomena, that knowledge and technology are the driving force for the productivity and efficiency of producers of goods or services produced in order to achieve business goals, the legal protection of consumers is considered very important if things happen that we do not want, namely fraud.

For example: In uploading an account belonging to someone in an automotive lovers forum on Facebook, Abbi found a motorcycle parts he was after, being sold. It

did not take long, Abbi immediately contacted the Facebook Account owner and started the price bargaining process, because the spare parts were only available one "sell fast because they need money", the seller explained in the forum. After reaching an agreement, the man immediately sent the money as a sign to be the seller. But unlucky, after sending money, contact jg the seller's account also suddenly disappeared and could not be contacted. "Just sincerely".[1]

Prior to the issuance of Law Number 11 Year 2008 regarding Information Technology and Electronic Transactions, various statutory regulations such as copyright law, patent law, trademark law, telecommunications law, and Law number 8 of 1999 concerning Consumer protection. In addition to protecting against transactions in social media (internet), it is also regulated in KUHP Article 378 regarding fraud, because basically fraud in buying and selling transactions in media

Internet not much different from conventional fraud, the only difference being the means of his actions against fraud on the internet media where media is used by electronic means. The development of internet technology has created new problems in the field of law, specifically consumer protection law. In the scope of legal and technological talks, consumer protection is a very effective matter of the development and application of these technologies in the community.[2]

On the other hand the Consumer Protection Act which is now in force in Indonesia is still based on something that is physical in nature, not virtual/virtual. Trading transactions through electronic media or commonly called Electronic Commerce leaves a variety of problems that have no regulation. Electronic Commerce is formed from a variety of sub-systems that are arranged systematically, and each sub-system has its own problems.

The negative impact of ecommerce itself tends to harm consumers. Among other things related to the product ordered is not in accordance with the product offered, errors in payment, inaccurate delivery of goods or delivery of goods and other things that are not in accordance with the previous agreement.

Besides that, for producers, the large number of people who can access the internet makes it difficult for producers to detect whether buyers who want to order their products are real buyers or not. The issue of consumer protection in e-commerce is an important aspect to consider, because some unique characteristics of e-

commerce will place the consumer in a weak or disadvantaged position such as:

- a) Companies on the internet (the internet merchant) do not have a physical address in a particular country, so this will make it difficult for consumers to return products that are not in accordance with the order.
- b) Consumers find it difficult to get guarantees to get compensation.
- c) Products that are purchased by consumers may be incompatible or incompatible with the initial agreement.

In buying and selling through the internet, fraud often occurs. These frauds can occur involving the existence of business actors, goods purchased, prices of goods, and payments by consumers. Fraud involving a business actor, for example the business actor concerned is a fictitious shop.[3]

## II. RESEARCH METHOD

The method of approach used by the author in writing this law is juridical-normative supported by empirical research. Juridical-empirical is used to find data used to obtain data in the field relating to the issue of criminal protection. Whereas normative jurisdiction is used to search secondary data relating to criminal law protection in online trading transactions. In other words a method or procedure used to solve a problem by conducting research on primary data. The research specification used by the author in writing this law is analytical descriptive because this study describes in detail the social phenomena that are the subject of the problem.

## III. FINDINGS AND DISCUSSION

### 1. *Criminal law policy in regulating consumer protection in online trading transactions (e-commerce) on social media.*

Society always wants legal certainty in responding to social phenomena that occur, this is a reasonable demand because every time there is a crime the community suffers both material and moral losses. Furthermore, to determine how a rational step in conducting policy is not separated from the development policy objectives integrally. In an effort to determine any policy, it is always related and cannot be separated from national development it self, namely how to realize prosperity for the community.

Law enforcement officials tend to use criminal law as the only alternative in crime prevention and control (criminal politics). Crime prevention efforts can be divided into two, namely: the path of criminal (criminal law) and non-criminal pathway (outside of criminal law). Viewed from the perspective of criminal politics, the most strategic policy is through non-penal means because it is more preventive.[4] But the penal policy must still be carried out in the context of overcoming crime, because

criminal law is one of the social policies to channel public dislike or social disdain/hatred which is also expected to be a means of social protection.

Countermeasures against e-commerce criminal offenses need to be balanced with improvements and the development of a comprehensive criminal law system. Criminal law policy is something that is important in the development of modern criminal law. Implementing criminal law politics means holding elections to achieve good criminal law results in the sense of fulfilling a sense of justice and effectiveness. In addition, in implementing the politics of criminal law means efforts to realize criminal legislation in accordance with the circumstances and for the future.

### a) **Consumer Protection In Online Trading Transactions In The Criminal Aspect.**

The use of criminal law in Indonesia as a means to tackle crime does not appear to be a problem. This is evident from the practice of legislation so far which shows that the use of criminal law is part of legal policy or politics adopted in Indonesia. The use of criminal law is considered as normal and normal, as if its existence is no longer in question. The problem is the lines of policy or approach how should be taken in using criminal law? [5]

The criminal aspect related to electronic transactions is that in which people recognize the existence of an intentional to give a legal effect in the form of *bijzondereleed* or a special suffering in the form of a punishment to those who commit violations that have been determined therein.

Business behavior in buying and selling online turns out to usually use a false identity or guile in carrying out the action, then the business actor can be sentenced to provide a deterrent effect on the perpetrators, one of which is regulated in the Criminal Code Article 378 regarding fraud with witnesses to imprisonment a maximum of four years, and also Article 62 of the Consumer Protection Act with a five-year prison sentence or a maximum fine of Rp. 2.000.000.000 (two billion rupiah), and Article 28 paragraph (1) of the Information and Electronic Transaction Law concerning spreading false and misleading news that results in consumer losses in electronic transactions with a maximum penalty of imprisonment of six years and/or a maximum fine of Rp. 1.000.000.000 (one billion rupiah).

For the record, some developed countries categorize separately the offense of fraud committed online in the specific provisions of cybercrime. Whereas in Indonesia, the current ITE Law is general in nature with the emphasis on "spreading false and misleading news" and at the disadvantages "resulting from the act.

The purpose of the formulation of Article 28 paragraph (1) of the ITE Law is to provide protection to the rights and interests of consumers. The difference in principle from the offense of fraud in the Criminal Code

is the element of "self-benefit" in Article 378 of the Criminal Code is no longer listed in Article 28 paragraph (1) of the ITE Law, with legal consequences that benefit or not the perpetrators of fraud, do not remove the criminal element of the act by the provisions of the act are proven to cause harm to others.

#### **b) Legal**

Process In the legal process, both online fraud and conventional fraud are in principle the same. The difference is only his actions, namely using electronic systems (computers, internet, facebook, telecommunications devices), so that legally, online fraud can be treated the same as conventional offenses stipulated in the Criminal Code, can also use Law No. 11 of 2008 concerning Information and Electronics.

Article used in the Criminal Code is Article 378 of the Criminal Code, which reads as follows:

"Anyone with the intention to benefit themselves or others by breaking the law, by using a false name or false dignity, by deception or by a series of lies moves others to surrender something to him, or in order to make a member of debt or write off receivables, threatened with fraud with a maximum of 4 years."

Whereas, if charged with using Law No. 11 of 2008 concerning Information and Electronic Transactions, the article charged is Article 28 paragraph (1), which reads as follows:

"Everyone intentionally and without the right to spread false and misleading news that results in consumer losses in Electronic Transactions. "The criminal threat from that article is a maximum of 6 (six) years imprisonment and/or a maximum fine of 1 billion rupiah (Article 45 paragraph (2) of the ITE Law).

In this case, the police investigator is required to determine when to use Article 378 of the Criminal Code and when to use the provisions in Article 28 paragraph (1) of the ITE Law. However, in practice the police can impose layered articles on a criminal act that fulfills the elements of a criminal offense as regulated in Article 378 of the Criminal Code and meets the elements of a criminal offense Article 28 paragraph (1) of the ITE Law. This means that if indeed the elements of the criminal act are fulfilled, the police can use both articles.

Apart from that all the cases of fraud through electronic transactions most of the victims did not report to the authorities because the value of the transaction was considered not too large, but even so it was necessary to establish a Reliability Certification Agency mandated by Article 10 of the ITE Law.

For proof, law enforcement can use Electronic evidence and/or printouts as an extension as Article 5 paragraph (2) of the ITE Law, in addition to other conventional evidence in accordance with the Criminal Procedure Code.

Sounds Article 5 of the ITE Law:

- a) Electronic Information and/or Electronic Documents and/or printouts are valid legal evidence.
- b) Electronic Information and/or Electronic Documents and/or printouts as referred to in paragraph (1) are extensions of valid evidence in accordance with the applicable procedural law in Indonesia.

#### *2. Constraints Faced By Law Enforcers In The Implementation Of Criminal Protection Against Consumers In Online Trading Transactions (E-Commerce) Through Social Media.*

Law enforcement against criminal offenses Cyber in Indonesia still seems to be experiencing many obstacles or problems in solving problems that occur in the community. This if law enforcers cannot immediately deal with it does not rule out the possibility of opening opportunities for perpetrators of crime cyber, where they will always look for legal loopholes where they can enter the realm.

Some of the obstacles faced by law enforcers in settling online sale and purchase transaction cases include:

##### 1) The Digital Evidence

Search for digital evidence is still difficult, because of the lack of adequate infrastructure to obtain the evidence. Even though Central Java Police in particular have technical investigations through the Forensic Laboratory for cybercrime, these crimes are still difficult to overcome. Considering that cyber criminals are increasingly clever in carrying out their actions, for example by conducting false identities, it is difficult for investigators to trace or uncover or capture the perpetrators.

##### 2) Law Enforcement Official Resources, Especially Investigators.

In general police investigators still lack knowledge and numbers of personnel. So for that law enforcement officers should be given special education and training in the case of the case Cybercrime, so that they can understand the modus operandi of the perpetrators.

##### 3) There is also a need for a clear legal umbrella in terms of trade online on temporal social media, because without clear rules, aspects of consumer protection will automatically be ignored.

This causes differences of opinion among law enforcement officials in terms of interpreting cybercrime that occurs with the application of the article by the public, investigators, public prosecutors, and judges will affect the resolution of the case, thus creating legal uncertainty for victims who seek justice.

## **IV. CONCLUSIONS**

Based on the discussion of the above problems, the following conclusions can be drawn:

1. The criminal law policy against consumers in online trading transactions (e-commerce) has been regulated in Law Number 11 Year 2008 regarding Information and Electronic Transactions, but the Criminal Code is still used by the apparatus to resolve cybercrime cases. It also uses the consumer Protection Act *online shop*, which transactions are mostly used by online transactions. In addition, the latest law can also be used, namely Law No. 7 of 2014 concerning trade, where the criminal aspect that is in it is very heavy and has a deterrent effect on the culprit.
2. In the criminal law enforcement process, online fraud can be carried out by reporting it to the Police accompanied by preliminary evidence, then law enforcement will trace the source of the electronic documents. For proof, law enforcement can use electronic evidence and / or printouts as an extension of evidence as Article 5 paragraph (2) of the ITE Law, in addition to other conventional evidence in accordance with the Criminal Procedure Code.
3. The obstacle experienced by law enforcers in online transactions is to find out the position or whereabouts of fraud perpetrators, due to the limited facilities and infrastructure that we have, and also to open customer data related to banking, which is difficult to trace.

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