



## Protection of Consumer Rights in Cyberspace in Indonesia from an International Private Law Perspective

Supriyanto Hadi

Faculty of Law, Cenderawasih University, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v11i6.5830>

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### **Abstract**

The aim of this research is to find out and examine consumer protection in E-commerce in Indonesia. The research method used is normative juridical, namely library research carried out to obtain primary and secondary data as data support. The research results reveal that nationally at this time there are two things that the Indonesian government can do regarding E-commerce consumer protection, namely by revitalizing Law no. 8 of 1999 concerning consumer protection. Revitalization is carried out by adopting things related to online buying and selling transactions or electronic commerce that exist internationally. The second is related to law enforcement in terms of losses incurred as a result of electronic transactions, namely the government can carry out enforcement starting from the aspect of law enforcement officers to law enforcement institutions, namely judicial institutions and non-judicial institutions. The conclusion that can be obtained is that the public as consumers of E-commerce transactions are expected to be more careful in carrying out transactions, namely by paying attention to several things, namely paying more attention to trusted sites for shopping, not providing personal information to anyone and using safe payment methods when shopping. carry out transactions.

**Keywords:** *Protection; E-commerce; Consumer*

### **Introduction**

Cyberspace (Cyber World) is an electronic medium in computer networks that is widely used for one-way and reciprocal communication purposes online (directly connected). This virtual world is an integration of various communication technology equipment and computer networks (sensors, transducers, connections, transmissions, processors, signals, controllers) that can connect communication equipment (computers, mobile phones, electronic instrumentation, etc.) spread across the world. all corners of the world interactively. Cyberspace can also be interpreted as an Imaginary Location (where electronic activities are carried out) and also as a virtual mass that is formed through communication that is established in a computer network (interconnected computer networks).<sup>1</sup>

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<sup>1</sup> <http://library.binus.ac.id/eColls/eThesisdoc/Bab2/BAB%202-ts-r 2019-0038.pdf>. hlm.1

One manifestation of the development of the communications network technology revolution is the creation of cyberspace or cyber space, which in everyday terms is currently called the internet, which has led to the emergence of a new zone which is commonly referred to as cyberspace, where everyone has the right and ability to communicate with everyone else without any boundaries getting in the way. In this way, true globalization has basically been carried out in cyberspace, which connects all digital communities or those who often use the internet in their daily life activities.

As a result of such developments in communication technology, all aspects of human life will be impacted by the presence of the internet, the business or trade sector is the one that is experiencing the fastest growth. Doing business in cyberspace by utilizing technology and telecommunications devices, which is often termed e-commerce (electronic commerce), is a separate business mechanism that is actually still in its prime, but this is where its specialness lies, because for the first time all humans are all corners of the world, wherever they are, can be sure that they will have the same opportunities and possibilities to be successful in doing business via the internet or cyberspace, because apart from this system, it is still relatively new, the land that has not been "cultivated" is still very large and open to anyone.

Based on the existing reality, basically the phenomenon of trading in cyberspace requires an awareness of the need for business people and the consumer community to understand that there is a very fundamental change in the paradigm of business, which is completely different from conventional business which is completely limited.

### ***Research Methods***

The approach used in this legal research is a normative juridical approach. The normative juridical approach is to carry out library research to obtain primary data as main data, library research is also carried out to obtain secondary data as supporting data.<sup>2</sup> Data collection is used to answer problems related to consumer rights protection in cyberspace in Indonesia.

### ***Discussion and Results***

#### **1. Consumer Protection in E-Commerce in Indonesia**

In practice, E-Commerce activities are a process which is a series of actions between business actors and their consumers which is a system of buying and selling goods, transferring funds, and utilizing online services using the internet, where sellers and consumers are connected globally. The very fast commercial movement that is taking place in the global digital market which is called the internet, cyber space, whatever the term, even though it seems easier, and so praised, but at the same time, also opens up opportunities for people who have the mens rea to engage in consumer cybercrime in the form of fraud, misdirection and so on through the promotions they carry out. For this reason, another side of the existence of online business is the protection of consumers who in online business practices often become victims of fraud and misdirection.

Cyber consumer behavior is a conceptual analysis of commercial transactions between online consumers and online vendors. The ability to shop from anywhere and at any time has surprisingly increased the growth of E-Commerce, while on the other hand this feature has also opened up a way for online vendors to conduct online business systems in a deceptive and misleading manner, through

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<sup>2</sup> Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: RajaGrafindo Persada, 2012), hlm. 14.

advertisements that expose themselves to all people through cyberspace or cyber space.<sup>3</sup> Some cyber consumer theories tend to emphasize the low level of consumer understanding about the description of the product they buy, the transaction system and the content of online advertising. What online vendors do is actually a violation of the law because it often exceeds the boundaries of moral and business ethics.<sup>4</sup> Therefore, the presence and role of the government as the party responsible for providing protection to E-Commerce consumers through statutory regulations is a necessity.

Law of the Republic of Indonesia no. 8 of 1999 concerning Consumer Protection in Indonesia has been enacted for a long time, so even though this law protects the basic rights of consumers, for example, it stipulates that "consumers have the right to obtain correct information regarding information regarding goods, works and services as well as their rights."<sup>5</sup> obtained by consumers, the right to obtain good service, the right to be heard and so on. It did not regulate E-Commerce issues at all, because at that time it was not yet known to the consumer community in Indonesia. Because until now Law No. 8 of 1999 concerning Consumer Protection tends not to make any changes or revisions, so that the consumer protection law cannot accommodate the interests of consumers in the E-Commerce era, as a result there is a phenomenon like today where the public E-Commerce consumers often experience fraud and misdirection regarding products purchased online.

Apart from the several advantages and conveniences of the E-Commerce system that the author has described above, there are also very crucial legal issues, where if we look at the process and mechanism for E-Commerce transactions, several legal issues can be raised as follows:

- a. The problem of when an agreement occurs or is born in an e-commerce transaction. This problem is closely related to when demand and supply meet via the internet medium;
- b. Choice of law issues and evidentiary issues; Regarding the issue of choice of law and proof, this will become more complex and widespread when in the legal relationship covered by the E-Commerce transaction, there are foreign elements or foreign elements that arise either because of territoriality or personality, because this will expanding into other areas of law, namely International Private Law, all of which will have implications for which law will apply. This is due to the global reach of E-Commerce, so it is only natural that E-Commerce business transactions involve foreign elements. For example, a citizen of his own country and a foreign citizen, so that if a dispute occurs due to a lack of performance, for example, the resolution process will of course be more complex.
- c. Issues regarding the validity of digital signatures and data messages;
- d. In some aspects, online buying and selling transactions in E-Commerce are very risky, full of risks, especially because the consumer has the obligation to make payment first (advance payment) while he cannot see the truth of the goods ordered or their quality. Payments made electronically, either through bank transfers or by filling in credit card numbers on the internet, open up opportunities for civil and criminal fraud, while there is no exact guarantee that the goods ordered have been delivered as ordered. What will be used as evidence when there is a legal lawsuit, what basis will be used to assess the authenticity of an electronic document in E-Commerce which on average does not have a signature.

One of the advantages or advantages of online buying and selling transactions or E-Commerce is the diverse and detailed information that consumers can obtain compared to conventional trading without

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<sup>3</sup> Alfina Maharani dan Adnand Darya Dzikra, "Fungsi Perlindungan Konsumen dan Peran Lembaga Perlindungan Konsumen di Indonesia: Perlindungan, Konsumen dan Pelaku Usaha (Literature Review)," *Jurnal Ekonomi Manajemen Sistem Informasi*, No. 6 (2021): 659–666, <https://doi.org/10.31933/jemsi.v2i6.607>.

<sup>4</sup> Some cases involve e-commerce, such as email fraud, lending services, offering unreliable goods. Report 2019 of National Policy Agency of Mongolia.

<sup>5</sup> Niru Anita Sinaga dan Nunuk Sulisrudatin, "Pelaksanaan Perlindungan Konsumen di Indonesia," *Jurnal Ilmiah Hukum Dirgantara*, No. 2 (2018): 71–87, <https://doi.org/10.35968/jh.v5i2.110>.

having to go to many places. However, E-Commerce also has weaknesses. Electronic transaction methods that do not bring business actors and consumers together directly and that consumers cannot directly see the goods ordered have the potential to cause problems that are detrimental to consumers.

Various cases that arise related to the implementation of online buying and selling transactions mentioned above, especially the security factor in e-commerce, are certainly very detrimental to consumers. Even though guaranteeing the security of e-commerce transactions is very necessary to foster consumer confidence in its users. Ignoring this will result in a shift in the philosophy of efficiency contained in online buying and selling transactions or e-commerce towards uncertainty which will later hamper efforts to develop online or e-commerce institutions. - commerce. The legal issues and solutions described above are actually intended as nothing more than an effort to provide protection for consumers in e-commerce transactions, including the interests of business actors.

Security issues for consumers are an important problem in the use of electronic media, especially the internet, as well as for business actors. Without security guarantees, business actors will be reluctant to utilize this media. To guarantee this security, the thing that needs attention is the company's domicile issue, so that if there is a legal dispute, the legal position of the company offering its products via electronic media can be known with certainty. In principle, licensing, establishment and company registration issues are the same as companies in general, subject to the laws of the place where the company is registered.

Nationally, at this time there are two things that can be done by general consumer protection legal politics in Indonesia through the government to further optimize consumer protection, namely:

- a. Revitalizing Law No. 8 of 1999 concerning Consumer Protection as a specialist law that regulates the interests of business actors and consumers, where until now the existence of this Consumer Protection Law specifically has not anticipated the development of information technology in its regulation, so that its current existence cannot resolve legal issues and other problems in terms of online buying and selling transactions. Revitalization can be done by adopting matters related to online buying and selling transactions or electronic commerce or e-commerce in the international world through ratification of resolutions, the UN, specifically the commission that handles International Trade Law, has approved the UNCITRAL Model Law on Electronic Commerce with a resolution 51/162 as a mandate for progress towards harmonization and unification of international trade law for the benefit of all parties, especially parties in developing countries. Several countries in the world have regulated e-commerce transactions in their national legislation, including the Philippines with Act no. 8792, European Union Community with the approval of Directive 2000/31/EC on Certain legal Aspects of Information Society Services, in Particular Electronic Commerce, in Internal Market or Directive on Electronic Commerce by The European Parliament and The Council on 8 June 2000, also Singapore with the Electronic Transaction Act 1998, Australia with the Electronic Transaction Bill 1999, as well as America and Malaysia. Specifically for Singapore and Australia, a model is used in line with what is recommended in the UNCITRAL Model Law on Electronic Commerce.<sup>6</sup> Although the UNCITRAL Model Law on Electronic Commerce and the legal regulations that have been used in several countries do not specifically mention legal protection for consumers, the substance regulated in these regulations indirectly provides protection for parties carrying out electronic transactions. (e-commerce). However, of course this resolution can become legal material for the revitalization of consumer protection laws in Indonesia, as has been done in other countries.

- b. Law Enforcement. Law Enforcement referred to in this article is the enforcement of legal protection for consumers who experience losses due to default by one of the parties in online buying and

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<sup>6</sup> E.S. Wiradipradja dan D. Budhijanto, 2002, *Perspektif Hukum Internasional tentang Cyber Law*, dalam Kantaatmadja, et al, *Cyberlaw Suatu Pengantar*, Elips 11. hlm. 46

selling transactions at this time where Law No. 8 of 1999 concerning Consumer Protection does not yet regulate all matters related to E-Commerce or online buying and selling transactions. This means that nationally, the institution to provide protection to consumers is Law no. 8 of 1999 concerning Consumer Protection, but this Consumer Protection Law specifically does not anticipate the development of information technology in its regulation, so that this special legislation cannot cover legal issues regarding online transactions. Enforcement of consumer protection laws in the era from 1999 to 2000 or until the beginning of the development of digital technology was very worrying, even now it can be said that consumers in Indonesia are known as consumers who don't really care about their rights. Meanwhile, from the aspect of the government as a party whose position is a structure which in legal system theory has a role in law enforcement starting from the aspect of law enforcement officers to law enforcement agencies, in the legal field consumer protection has not played an optimal role, for example the lack of attention to the role of the Dispute Resolution Body Consumers (BPSK) by handing over the existence of this institution completely to the Indonesian consumer community, most of whom are not yet critical of their rights as consumers, even though the government's role is very strategic in empowering Indonesian consumers, because with the optimal role of this government, including in enforcing consumer protection law.

## **2. Legal Measures that Can Be Taken in Online Buying and Selling Transactions**

Because the different characteristics of the trading system through electronic technology or online buying and selling transactions are not covered by the Consumer Protection Law, therefore it is necessary to revitalize Law No. 8 of 1999 concerning Consumer Protection and amend as necessary so that it also covers Cyberlaw includes e-commerce so that consumer rights as users of electronic technology in the trading process, especially in carrying out e-commerce transactions online, can be guaranteed.

Other legal measures that can be taken by parties who feel disadvantaged in online buying and selling transactions, in fact at a certain level to protect consumers, criminal law can also be used, in this case the Criminal Code, then legal institutions that can protect consumers in online buying and selling transactions. namely with insurance.

Other rules that can be used as a basis for lawsuits or compensation in online buying and selling transactions are:

### **a. Litigation**

The legal basis for filing a lawsuit in court is contained in Article 38 paragraph 1 of the ITE Law and Article 45 paragraph 1 of the UUPK. In Article 38 paragraph 1 of the ITE Law it is stated that: "Every person can file a lawsuit against a party that operates an Electronic System and/or uses Information Technology which causes harm". Meanwhile, Article 45 paragraph 1 of the UUPK states that "Every consumer who is harmed can sue the perpetrator business through institutions tasked with resolving disputes between consumers and business actors or through courts within the general judiciary."

### **b. Non Litigation**

Out-of-court consumer dispute resolution is carried out to reach an agreement regarding the form and amount of compensation and/or regarding certain actions to ensure that losses suffered by consumers will not occur again (Article 47 UUPK)

Legal remedies in the case of international online buying and selling transactions or E-Commerce, the problem that arises in the event of a dispute in an international online E-Commerce buying and selling transaction is determining which law/court is used to resolve the dispute.. In the Information and Electronic Transactions Law (UUITE), regulations regarding online buying and selling

transactions or E-Commerce which are international in nature are contained in Article 18 UITE, creating a situation involving the existence of foreign elements so that they are trapped in the realm of International Private Law, because That's why the author suggests that resolving cases related to online buying and selling or e-commerce problems which have become international civil problems is better resolved using an alternative dispute resolution (ADR) system developed from the revitalization of the Consumer Protection Law as follows. The author explained above, where ADR is part of the authority of the Consumer Dispute Resolution Agency (BPSK), which was formed by the government. By using ADR, resolving consumer disputes will not be confused by the doctrines of Private International Law, such as foreign elements, choice of law, which legal system is relevant and so on.

From what has been explained above, it is very clear that for the need to protect consumers, especially consumers who carry out business transactions using electronic technology (E-Commerce), the urgency to create legislation that regulates this matter is very high. This is because existing laws and regulations, especially laws governing consumer protection, have not accommodated these needs. At least it is time for Indonesian legal politics to protect Indonesia to revitalize Law No. 8 of 1999 concerning Consumer Protection as a specialist law which must be accompanied by a strong law enforcement system and institutions, so it still goes back to Friedmann's theory of the legal system which is interdependent. Optimality of substance must be supported by optimal legal structure and culture of society as well.

So law enforcement for consumer protection, including those who act as consumers in Cyberspace, will be optimal if apart from good regulations, the law enforcement apparatus is pro-active, as well as the condition and quality of consumers who are aware of their rights. So if the three sub systems work optimally then the expected results are also optimal.

### ***Conclusion and Suggestions***

Before ending this article, while waiting for the government to revitalize all laws and regulations relating to cyber space, including the protection of cyber or e-commerce consumers, it is a good idea to pay attention to what was conveyed by Kim Key and Eric Griffith with the aim of simply eliminate the number of consumers who experience fraud or misdirection in carrying out E-Commerce transactions, where according to them, people who are interested in doing E-Commerce, at least have a danger warning or some kind of precautionary principle that includes:<sup>7</sup>

#### **1. Only Shop on Popular or Known Websites**

Search results can be rigged to mislead you or even infect your device with malware. Many things are not worth the risk when we all know that Amazon.com provides everything. Likewise, nearly every major retail outlet, from Target to Best Buy to Home Depot, has an online store. Beware of spelling mistakes or sites that use a different top-level domain (for example, .net instead of .com) it's the oldest trick out there. Yes, the sales on these sites may look attractive, but that's how they trick you into giving away your information.

#### **2. When in Doubt, Look for the Key**

If you're not sure whether the site you're purchasing from is legitimate, look at your browser's address bar. Never buy anything online from a site that doesn't display a padlock icon near its URL. The padlock icon indicates that the site has SSL (secure socket layer) encryption installed. This means your data transfer is more secure compared to unencrypted sites. Another way to find out if a site has SSL is to look for URLs that start with https://, which is standard, even on non-shopping sites. Google Chrome even marks any page without the extra S as "unsafe". So a site without it will stand out more.

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<sup>7</sup> Kim Key & Eric Griffith in <https://www.pcmag.com/explainers/tips-for-safer-online-shopping>, page.1

### 3. Research the Seller Before Purchasing

If you're wary of a site, do your due diligence. The Better Business Bureau has an online directory and fraud tracker. Yelp and Google are packed with retailer reviews. Put the company through the wringer before you enter your credit card number. There's a reason why non-delivery/non-payment is the most common cybercrime complaint: it's devastating when this happens, both financially and emotionally.

### 4. Lying or Omitting Personal Information on Shopping Forms

There's no reason why an online shopping e-tailer needs to know your date of birth, middle name, Social Security number, or any other personal information besides your payment method and mailing address. Don't hesitate to lie if a retailer requires you to fill in such data to complete your transaction. What will they do? Tell me? The more a fraudster knows about you, the easier it is to steal your identity. If possible, provide as little personal data as possible by default. Big sites get hacked all the time, so it's important to keep your information private.

### 5. Don't Use a Debit Card to Shop Online

If your debit card is compromised, then fraudsters will have direct access to your bank funds. We recommend using a credit card or mobile payment app when shopping online. Some banks offer disposable credit card numbers to make online shopping safer, as do some security services such as IronVest. The Fair Credit Billing Act ensures that you are only responsible for credit card charges up to \$50 that you did not authorize if you are defrauded. Regularly review electronic statements for your credit cards, debit cards, and checking accounts. If you see something wrong, pick up the phone to resolve the issue quickly. In the case of credit cards, pay the bill only if you know all your charges are accurate. You have 30 days to notify your bank or card issuer of the problem; however, you may still be responsible for such charges.

### 6. Pay Via Cellphone/Mobile Banking Application

Paying for goods using your smart phone has become standard in physical stores and is safer than using your credit card. Using mobile payment apps like Apple Pay, Google Pay means you have authenticated your identity using your device, so no one else can claim to be you and steal your data or money. Plus, you avoid card skimmers.

### 7. Beware of Fake Gift Card Exchanges

When it comes to gift cards, stick to the source when you buy them; Scammers like to auction gift cards on sites like eBay for little or no funds. There are a lot of gift card “exchanges” out there that are a great idea—allowing you to exchange cards you don't want for cards you want—but you can't trust anyone else who uses such services. You may get a card and find it has already been used. Make sure the site you use has a strong guarantee policy. Better yet, go directly to a retail store to get a physical card.

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