

## PROTECTION OF CONSUMER RIGHTS IN ONLINE TRANSACTIONS FROM THE PERSPECTIVE OF POSITIVE LAW ON CONSUMER PROTECTION AND THE COMPILATION OF SHARIA ECONOMIC LAW

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### ABSTRACT

*This research is motivated by a phenomenon that business actors in buying and selling online often provide unclear information. This research is a library research on consumer legal protection in online buying and selling according to Law No. 8 of 1999 and consumer protection in online buying and selling according to the Compilation of Sharia Economic Law and comparison of consumer protection in online buying and selling according to UUPK and KHES. The results showed that, Legal protection of consumers in online buying and selling according to Law No. 8 of 1999 is not fully realized, because many consumer rights are violated by online business actors. Violated consumer rights are contained in GCPL Article 4, Article 7, Article 8, Article 17, Article 19. The legal protection of consumers in online buying and selling based on the Compilation of Sharia Economic Law is the provision of protection in the form of khiyar rights (cancel or continue the sale and purchase contract). The similarity of consumer legal protection in online buying and selling according to GCPL and KHES is that they must provide correct, clear, and honest information about the conditions and guarantees of goods and / or services. While the difference in consumer protection in online buying and selling according to GCPL and KHES is that according to GCPL, administrative sanctions and criminal sanctions are imposed; in KHES, consumers are given the right to khiyar (cancel or continue the contract) in online buying and selling.*

### KEYWORDS

*Legal Protection, Consumer, Online Buying and Selling, Law, Compilation of Laws*



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### INTRODUCTION

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The development of this era is very rapid, especially with the advancement of technology which brings great changes to the pattern of human life. This technological development is very helpful for humans in carrying out various activities. For example, in interacting with others, communicating, also to find news through electronic media, and even to conduct business and economic transactions without having to go anywhere or move from where he is but only through cyberspace.

Currently, cyberspace technology is often referred to as internet media. The internet is a mass media that is familiar to the public. All groups can also use it to market their business products via the internet. The internet is considered the most practical, fast and easy media.

A survey conducted by Kaspersky Lab and B2B International revealed Indonesia to be a country where 26 percent of consumers are targeted by online crime. The survey also found that 48 percent of consumers were targeted by scams designed to deceive and obtain sensitive information and financial data for criminal acts (Wardani, 2016).

Buying and selling carried out in cyberspace is often referred to as online buying and selling. Any item can be used as an object of trade through online, as long as it is not an unclean item. Because in Islam it is not allowed to sell unclean goods. In Islam, buying and selling is allowed, as long as there are no elements of usury, injustice, monopoly, and fraud.

This kind of buying and selling transaction can actually benefit business actors and consumers on the one hand, business actors can market their products and consumers can choose the goods to be purchased. But on the other hand, in cyberspace transactions, sometimes there are many crimes that can harm business actors and consumers, for example fraud.

Surah an-Nisa verse 29 explains that:

*O you who believe, do not eat from one another's wealth by means of false means, except in trade that is consensual between you. And do not kill yourselves, indeed, Allah is Merciful to you. (Department of Religious Affairs of the Republic of Indonesia, Al-Qur'an and its Translations. (Bandung: Diponegoro, 2000), )*

Similar research was also reviewed by (Azzam, 2010) fiqh is a set of rules or laws of God in which it regulates the fulfillment of needs related to buying and selling by paying attention to its maslahat and mafsadat. In fulfilling the needs of life, God's law and state law support each other in buying and selling regulations which cover the rights and obligations of sellers and buyers. The risk of buying and selling online is a lot of fraud because the seller ignores the law of God and state law (sanctions), fraud occurs due to the lack of caution of the buyer.

Buying and selling is a transaction that occurs between the two parties regarding the exchange of money and goods. In addition, the object being traded must be beneficial to the owner. There are several verses of the Koran and hadiths that talk about buying and selling, among others:

Meaning: "There is no sin for you to seek the bounty of your Lord. So when you have departed from 'Arafat, remember Allah in the Masy'arilharam, and remember Allah as He has shown you; and you were before that truly among those who were astray". (QS. Al-Baqarah: 198)

Basically, muamalah activities are allowed, as long as there is no evidence that prohibits them. This is in line with the rules of muamalah fiqh.

الأصل في المعاملة بالباطن ان يدل دليل على تحريمها

Meaning: "The original law in muamalah is permissible until there is evidence indicating that it is prohibited".

Hadith from Al-Baihaqi, Ibn Majah and Ibn Hibban, the Messenger of Allah said

انما البيع عن تراض (رواه البيهقي)

Meaning: "buying and selling is based on mutual consent"

Online buying and selling is currently in existence, because many people make transactions online. To market the goods to be sold they use social media such as Facebook, Twitter, and other media (Afandi, 2009).

A survey conducted by Bukalapak.com found that 1 in 5 Internet users have been victims of online fraud. Based on the survey, it is known that online fraud is carried out through social media sites, be it forums, Facebook, or Twitter. As many as 46 percent of respondents based on this survey claimed to have experienced fraud through buying and selling forums, while 24 percent of respondents were through Facebook, while another 16 percent were deceived through the web and 14 percent of short message services (Sutiyoso, 2008).

In practice, it is not uncommon for online buying and selling to cause problems. For example, the goods purchased do not match the pictures posted on the site, and often do not even match the buyer's request or order. For example, in purchasing clothes, sometimes the color, size and quality requested by the buyer are not suitable. The business actor should be subject to sanctions for compensation for the mismatch of goods purchased by the buyer (Fauroni, 2008).

For example, if in a sale and purchase agreement there has been an agreement regarding "goods and prices," the birth of the agreement, otherwise everything that has not been agreed for the parties should be determined by law. A sale and purchase agreement, especially the sale and purchase of movable goods is a consensual agreement, which is binding at the time of the agreement, even though the price has not been paid and the goods have not been delivered (Miru & Pati, 2020).

An example of a case of fraud in an online buying and selling agreement is a case that occurred in Barru Regency, South Sulawesi Province in 2020, where in the chronology of the case the victim F and the perpetrator NBH had made an agreement via online media for a transaction to buy and sell sensi masks that the perpetrator had uploaded via the Facebook social media application, then the perpetrator and the victim began to bargain with each other via the messenger application, the victim and the perpetrator agreed on a price of Rp. 170,000 / box by ordering 15 boxes of masks at a price of Rp. 2,550,000, then the victim chatted again via WhatsApp and the perpetrator sent an account number to the victim (Azzam, 2010). However, after the victim sent the money to the perpetrator in full

according to the price of the goods ordered, when the money arrived at the hands of the perpetrator, the perpetrator also made a package in the form of a box containing notebooks and used baby towels, with a neat appearance then the perpetrator withdrew the transfer money of Rp. 2,550.000 then headed to the place of delivery of goods in Parepare City with his wife, not a few minutes later the perpetrator blocked the victim's WhatsApp number and Facebook account, in this case the victim suffered losses and reported this incident to the Barru Regency Police and in this case the police have succeeded in uncovering a case of fraudulent online buying and selling agreements with evidence secured by one gold-colored Oppo brand cellphone, one cellphone card, a dossier with a neat appearance, books, and used baby blankets and money Rp. 450,000, -. (Buana et al., 2020)

The second case in February 2021 was found in Sidrap Regency, South Sulawesi Province in 2021, the Cyber Crime Sub Directorate of the Special Criminal Investigation Unit of Polda Metro Jaya arrested an online fraud group using fake accounts in several well-known online stores in Indonesia, The group created fake accounts in online stores, including olx.co.id, kaskus.co.id, bukalapak.com, tokopedia.com and others, according to the statement of the Director of Special Crimes of Polda Metro Jaya, Chief Commissioner in a press statement at the Metro Jaya Police Headquarters where a group of fraudsters under the guise of offering motorbikes, watches, agate, cars and cell phones through various fake accounts in online stores were finally arrested by the police. The modus operandi was that after the victim transferred the money, the group immediately took the money and the goods ordered by the victim were not sent, because basically the goods never existed. Five people were arrested, namely H (34), AS (23), Z (49), R (33), and B (32), all five were arrested in the Sidrap area of South Sulawesi. In addition to the suspects, the police also secured a number of criminal evidence including 14 cell phones, 32 bank accounts, one laptop, one Honda CRV, one Honda Freed, and a Yamaha Motorcycle, where the total loss of victims reached Rp. 10.1 billion.

Online buying and selling is a trading business activity via the internet or another term is Electronic Commerce (E-Commerce). According to Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, Article 1 number 2 explains that Electronic Transactions are legal actions carried out using computers, computer networks, and / or other electronic media, business actors are prohibited from offering, promoting, advertising goods and / or services incorrectly. (Shidarta, 2006) In online buying and selling transactions, there must be a guarantee of the goods being traded. So that buyers feel comfortable in making transactions.

In the Compilation of Sharia Economic Law Article 69, it has been explained that the seller and buyer have the right to *khiyar* / choose while in the place of sale and purchase, from the time the *ijab* is carried out until the end of the meeting. In other words, buyers must be more careful before deciding to make a buying and selling transaction. Although online buying and selling is often based on trust between the two parties, buyers must be more careful and thorough before the goods are received. If the goods do not match the order, then the transaction can be canceled.

In buying and selling there are conditions that must be met, namely according to the Shafi'iyah madzhab there are 2 conditions, among others: *ijab-qabul* and the object of sale and purchase. One of the reasons for the defect of mutual willingness is the absence of conformity between the nature or criteria of the goods conveyed by the seller to the buyer or expected by the buyer so that regret arises as a sign of the destruction of mutual willingness (Muhammad dan Alimin, 2004). In addition, there are basic conditions for the permissibility of buying and selling via online, which are as follows: 1) not violating the provisions of religious law, such as prohibited business transactions, fraud, fraud and monopoly; 2) there is an agreement between the two parties (seller and buyer) if something undesirable happens between the agreement or cancellation; 3) there is control, sanctions and strict and clear legal rules from the government (competent institutions) to ensure the permissibility of doing business through online transactions for the community (Jusmaliani et al., 2008).

In the study of Islamic jurisprudence, the truth and accuracy of information when a businessman proclaims his merchandise occupies a significant study. Islam does not recognize a classic capitalism term that reads "*caveat emptor*" or "let the buyer beware" (the buyer must be careful), nor "*caveat dendor*" (the businessman must be careful), but in Islam what applies is the principle of balance (*al-ta'adul*) or equilibrium where buyers and sellers must be careful where it is reflected in the theory of agreements in Islam.

In this case, the object being traded must be clear, so that the buyer does not feel disadvantaged. When in an online buying and selling transaction the buyer has chosen according to the choice, but until the hand does not match the intended or even there is a defect, the buyer can ask for compensation or can also report to the authorities for protection (Muhammad dan Alimin, 2004). But most people who have bought in online buying and selling and found that the goods do not match the characteristics mentioned, they only grumble behind without wanting to protest to business actors to get justice.

In such a reality, consumers are only fooled and taken advantage of by business actors, because they do not have the courage to protest. Whereas legal protection is very important for parties who conduct buying and selling transactions through the internet or other media. Therefore, from the description above, it is very interesting for the author to conduct research with the title "Legal Protection of Consumers in Online Sale and Purchase Transactions in the Perspective of Law No. 8 of 1999 concerning Consumer Protection and the Compilation of Sharia Economic Law.

## **RESEARCH METHOD**

This type of research is "library research" or literature review. Library research, aims to collect data and information with the help of various materials found in library rooms, such as: books, magazines, documents, records and historical stories and others (Nasution, 2012).

The Law approach uses the Criminal Code, Law Number 8 of 1999 concerning Consumer Protection and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and

Transactions. So the purpose of the study here is to identify and analyze several documents or library materials in accordance with the problems studied, namely the protection of consumers buying and selling online according to the Consumer Protection Law and the Compilation of Sharia Economic Law (Moleong, 2014).

## RESULT AND DISCUSSION

E-commerce is often defined as buying and selling goods and services through electronic media, especially through the internet or commonly called online buying and selling. In this business, sometimes in sending contracts using e-mail or other media. In other words, trade through electronic systems is trade whose transactions are carried out through a series of electronic devices and procedures.

E-commerce is business activities involving consumers, manufacturers, service providers and intermediaries using computer networks, namely the internet. (Asnawi, 2004). As quoted by Haris Faulidi Asnawi, Kosiur argues that e-commerce is not just a mechanism for selling goods or services through the internet medium, but rather a business transformation that changes the ways companies carry out their daily business activities.

According to the World Trade Organization (WTO), the scope of e-commerce includes the production, distribution, marketing, sale, delivery of goods or services through electronic means. While the Alliance for Global Business, a leading trade association defines e-commerce as: all value transactions involving the transfer of information, products, services or payments through electronic networks as a medium. It is through this that business transactions can take place from advertising, inventorying, designing, cataloging, transactions and delivery of goods (Hardika & Ardianto, 2015).

### **Legal Basis for Online Buying and Selling According to Positive Law**

Buying and selling transactions are basically activities that help each other. With this online buying and selling, the legal basis for the transaction is regulated in law, namely:

In article 1 points 1 and 2 of UUIITE, electronic information is a set of electronic data, including but not limited to writings, sounds, images, maps, designs, photographs, electronic data interchange (EDI), electronic mail, telegram, telex, telecopy or the like, letters, signs, numbers, access codes, symbols, or perforations that have been processed which have meaning or can be understood by people who are able to understand them. Then electronic transactions are legal actions carried out using computers, computer networks, and/or other electronic media (Wetboek, 2014).

In addition, the legal basis for this online buying and selling is Article 1 point 24 of the Law on Trade, which states that trade through electronic systems is trade whose transactions are carried out through a series of electronic devices and procedures.

### **Consumer Protection**

In the big Indonesian dictionary, Protection comes from the word *lindung* which means to protect, prevent, defend, and fortify. (Dendy Sugiono, Big Indonesian Dictionary, 2008)

Protection is an act or effort undertaken to protect telecommunications networks and supporting telecommunications facilities. Consumer protection is a very necessary thing to continue to do because it is related to efforts to prosper the community in connection with the development of trade transactions in modern times (Sadar et al., 2012).

Consumer protection is not only a concern of the Indonesian government but also a concern of other countries. Consumer protection law in the Republic of China is a specific national law that specifically protects the interests and safety of end consumers who use goods or services provided by business operators. This consumer protection is a process to protect consumers against promotional practices from business operators or sellers in the event of damage or defective products and things that can harm consumers themselves.

The Guidelines for State Policy since 1993 (MPR Decree No. II/MPR/1993) explicitly include the word "consumer protection", although it does not elaborate further on its meaning and substance. Implicitly, one can immediately find in the GBHN various matters related to consumer interests, such as the obligation to produce/improve: (1) quality goods, (2) quality and equity of education, (3) quality of health services, (4) quality of housing and the environment, (5) an orderly, smooth, safe, and comfortable transportation system, (6) healthy competition, (7) legal awareness. All of these are part of consumer interests as well.

The Civil Code does not mention the word "consumer" at all. Other terms that are equivalent to it are such as buyer, tenant, and debtor. As in Article 1504 (jo. Articles 1322, 1473, 1474, 1491, 1504 to 1511): The seller is obliged to bear against hidden defects in the goods sold, which render them unsuitable for the intended use, so that if the buyer had known of the defect, he would not have bought the goods at all, or would not have bought them but at a lesser price.

### **CONCLUSION**

Based on the discussion of the results of the research that has been carried out regarding consumer legal protection in online buying and selling transactions in the perspective of Law No. 8 of 1999 and the Compilation of Sharia Economic Law, the following conclusions can be obtained:

Legal protection of consumers in online buying and selling according to Law No. 8 of 1999 is all efforts that ensure legal certainty to provide protection to consumers. This Consumer Protection Law has not been able to fully protect consumers. It can be seen that many consumer rights are still violated by online buying and selling businesses.

Consumer legal protection in online buying and selling according to the Compilation of Sharia Economic Law is the provision of protection in the form of *khiyar* rights (cancel or continue the sale and purchase contract). This *khiyar* is very important in an effort to protect consumer rights where the position of consumers who are often harmed by fraudulent business actors by selling goods that are not in

accordance with what was ordered or advertised, so that consumers can ask for compensation or cancel the contract. If someone breaks the promise, they are subject to sanctions in accordance with Article 38 KHES, namely paying compensation, canceling the contract, transferring risks, fines and paying court costs. However, protection using KHES is still very minimal and difficult to implement, because consumers and business actors cannot meet directly, so that often the goods that have been ordered cannot be returned.

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