

RESPONSIBILITY OF BUSINESS ACTIVITIES IN ELECTRONIC TRANSACTIONS THROUGH THE INTERNET SITE VIEWING FROM THE LEGAL PERSPECTIVE OF CONSUMER PROTECTION

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Abstract: At first the internet network could only be used by the educational environment (universities) and research institutes. Then in 1995, the new internet can be used for the public. With the application can make it easier for people to access information on the internet. After the opening of the internet for the public interest, more and more business applications have sprung up on the internet. Users of electronic systems, also known as consumers, can quickly find out about information developments in various parts of the world. By relying solely on search engines such as Google and Yahoo, users of electronic systems around the world have easy internet access to various kinds of information. Compared to books and libraries, the internet represents the dissemination, knowledge of information and data to the extreme. The internet can also be used by the government in providing public services. The internet is the easiest means to meet the needs of finding information that consumers want.

Keywords: Business Actors, Electronic Transactions, Internet Sites

I. INTRODUCTION

This online business application based on internet technology is starting to show a financial aspect.¹ Small, medium and large scale companies use internet technology to support their business activities. The internet is used as a place for promotion, business and a facility to get information about everything. Marketing that used to be done conventionally, is now mostly done with the help of internet technology. Currently a company can survive if it has a competitive advantage compared to its competitors. For example, the internet is used as a means to book/reserve tickets for airplanes, trains, hotels, payment of telephone bills, electricity, and so on. This makes it easier for consumers to carry out their business activities/transactions.

This business opportunity was also glimpsed by business actors who then created a site to conduct online buying and selling transactions. There are several store outlets that also market their products through online networks. Until now, there have been so many domestic and foreign sites that promote themselves as providers of buying and selling transactions via online services. In general it can be classified as follows:

1. business actors directly open buying and selling sites;
2. business actors open buying and selling site facilities; and
3. there is a site in which there is also a forum for buying and selling via online.

From the three main categories, it can be grouped that the site owner is also responsible and the site owner disclaims responsibility for the said online buying and selling transactions.

Consciously or not by internet site users, every internet site includes a legal disclaimer template in the terms of use & privacy policy or in other parts of the website's layout. The disclaimer is also called a disclaimer contained on the internet site, its contents more or less state that everything contained in the internet site is solely for information and the site owner is not responsible for the accuracy and completeness of the information contained therein.² In online buying and selling sites (e-commerce) on the internet, there are many disclaimers that state that the electronic system operator as a business actor is not responsible for any damage arising from any product that has been purchased by consumers.

A standard contract contains clauses that are burdensome for one of the parties. For one-sided clauses, there are several uses of the term, including the Exoneration Clause or the Exemption Clause.³ In English law literature, the Exoneration Clause is also called the exclusion clause. Meanwhile, legal literature in the United States mentions it as an exculpatory clause, a warranty disclaimer clause and a limitation of liability clause. Meanwhile, according to Nieuw Nederland Burgerlijk Wetboek (NNBW) the term *onredelijk bezwaard* is used.⁴

Many of the buyers realize that not all sites provide services to be able to deal directly with the customer service department if it turns out that they are experiencing problems with the transactions they are experiencing. In the contact us section or contact us, buyers will usually be given access to either an email address or a telephone number that can be contacted. The author found that not all telephone services can be contacted for 1 x 24 hours, but most sites do not provide telephone service information or provide mailing address

¹Budi Rahardjo, Details of Cyberspace Regulations and Regulations in Indonesia (Serial Online) 2003, accessed from: URL:<http://www.budi.insan.co.id>, accessed 05 July 2022

²Diana Kusumasari, Legal Status of Inclusion of Disclaimer in Internet Site, Hukumonline.com, 28 February 2011, <http://www.hukumonline.com/klinik/detail/lt4d5e3dfc6af24/status-Hukum-pencantuman-disclaimer-dalam-site-internet>, accessed 05 July 2022.

³Sri Gambir Melati Hatta, Buy Lease As An Unnamed Agreement: Public Views and Attitudes of the Indonesian Supreme Court, (Bandung: Alumni, 2000), p. 149.

⁴Mariam Darus Badruzaman, Protection of Consumers in BPHN Symposium on Legal Aspects of Consumer Protection, (Bandung: Binacipta, 1969), p. 63.

information, even though their domicile is in Indonesia. The weakness of buyers in Indonesia is not reading and paying close attention, this is a classic problem faced,

E-commerce can be understood as trading transaction activities both goods and services through electronic media that provide convenience in consumer transaction activities on the internet. E-commerce can also be interpreted as a business process using electronic technology that connects companies, consumers and the public in the form of electronic transactions and the exchange/sale of goods, services and information electronically.⁵ Online buying and selling transactions (e-commerce) are also a sale-purchase agreement similar to conventional buying and selling that people usually do. There are differences in the media used, namely, in electronic buying and selling transactions used are electronic media in the form of the internet.

Consumer complaints related to online buying and selling (e-commerce) were also found, one of which was about a consumer who bought a watch at an online shop on the internet where problems arose when the goods arrived in the hands of the consumer, it turned out to be just a watch box without a watch even though previously the consumer had made a full payment to the online shop business actor, of course the consumer felt disappointed and disadvantaged then immediately contacted the online shop and the online shop did not want to be responsible for the absence of a watch in the clock box, of course the reason for the online party The shop is strengthened by the disclaimer that has been previously stated, the online shop is not responsible for the goods that have been sent to the buyer.⁶

Limitation of liability (limitation of liability), this principle is more dominantly used by business actors by including it as an exoneration clause in the standard agreement they make. This principle is very detrimental to consumers if it is determined unilaterally by business actors. The inclusion of standard clauses is basically not prohibited. The purpose of making standard clauses is to provide convenience for the parties who will enter into an agreement. Article 18 point a of Law Number 8 of 1999 (Law Number 8 of 1999) stipulates that business actors in offering goods and/or services intended for trading are prohibited from loading or including standard clauses in each document and/or agreement when stating the transfer of responsibility businessmen.⁷

The consumer as the weak party in this case, will experience a loss if the business actor includes an exoneration clause in a sale and purchase agreement. This is because consumers only have the choice of accepting or rejecting the agreement (take it or leave it contract). However, what happens is that many consumers accept agreements that contain an exoneration clause due to the need for these goods and/or services. Business actors in offering their goods and/or services are expected to be wiser in including standard clauses in a sale and purchase agreement.

How important consumer rights are, thus giving birth to the idea that consumer rights are the "fourth generation of human rights" which is the key word in the conception of human rights. Electronic Information and Transaction Activities in Indonesia have been promulgated based on Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. . Law Number 19 of 2016 as a special provision (*lex specialis derogate legis generali*) regulates electronic transactions because of its scope in cyberspace (cyberspace). In Law Number 19 of 2016 it is regulated that the main principle of electronic transactions is an agreement or by "agreed upon methods" by both

⁵Munir Fuady, *Introduction to Business Law: Managing Modern Business in the Era of Globalization*, (Bandung: PT Citra Aditya Bakti, 2015), p. 407.

⁶Toto Adhitama, "About gadget", 2012, accessed from the URL:<http://asia.groups.yahoo.com/>, accessed on 05 July 2022.

⁷Sukarmi, *Cyber Law Electronic Contracts in the Shadows of Business Actors*. (Bandung: Pustaka Sutera, 2008), p. 15.

parties (in this case business actors and consumers). Electronic transactions bind the parties to the agreement, so that consumers who carry out electronic transactions are considered to have agreed to all the terms and conditions that apply in the transaction (Article 18 paragraph (1) of Law Number 19 of 2016). This relates to the disclaimer listed by business actors who use internet media.

II. RESEARCH METHODS

1. Research Form

This research uses a normative juridical form of research. According to Saptomo⁸ Activities carried out are inventory of legal materials, identification of legal materials, classification of legal materials, systematization of legal materials, as well as interpretation and construction of legal materials. Then Ronny Hanitijo Soemitro⁹ explained that the normative legal research approach was carried out by researching positive legal inventories, researching legal principles, legal systematics, synchronization levels, vertically and horizontally. So in this research, the activities carried out are studying primary legal materials, secondary law and tertiary law which will be used as guidelines in discussing and analyzing problems.

2. Research Specification

Studyor research is an effort to find information again carefully, carefully, diligently, painstakingly, and earnestly. The meaning of finding is an activity to find something that actually already exists but has not been systematically formulated.¹⁰ Specifications This research is a descriptive analysis research, namely research that in addition to providing an overview, writing and reporting an object or an event will also draw general conclusions from the problems discussed.

3. Approach Method

There are several approaches known in research, namely the statutory approach, the case approach, the historical approach, the comparative approach, and the conceptual approach.¹¹ This research uses several approaches, where with these approaches the compiler will get information. The research approach used is the statute approach. This approach is carried out by examining all laws and regulations related to the problems (legal issues) is being faced. This statutory approach, for example, is carried out by studying the consistency/compatibility between the Constitution and the Law, or between one law and another. case approach This approach is carried out by conducting a study on cases related to the legal issues at hand. The cases studied are cases that have obtained court decisions with permanent legal force. The main thing that is studied in each of these decisions is the judge's consideration to arrive at a decision so that it can be used as an argument in solving the legal issues faced. and comparative approach. This approach is done by comparing legal regulations or court decisions in one country with legal regulations in other countries (can be 1 or more countries), but must be about the same thing. Comparisons are made to obtain similarities and differences between the legal regulations/court decisions.

4. Data source

In normative legal research, library materials are basic legal materials which in research are classified as secondary data¹². Secondary data can be classified into 3 legal materials:

1. Primary law material (primary law material)

⁸ Ade Saptomo, *Principles of Legal Research Methodology*, (Surabaya: Unesa University Press, 2007), p. 83.

⁹ Ronny Hanitijo Soemitro, *Legal and Jurimetric Research Methodology*, (Jakarta: Ghalia Indonesia, 1998), p. 11.

¹⁰ Ade Saptomo, *Op. Cit.*, hlm. 28.

¹¹ Peter Mahmud Marzuki, *Legal Research*, (Jakarta: Kencana, 2009), p. 22.

¹² Abdulkadir Muhammad, *Law and Legal Research*, (Bandung: PT. Citra Aditya Bakti, 2004), p. 82.

Namely legal materials that have binding power in general (laws) or have binding power for interested parties (contracts, conventions, documents, laws and judges' decisions).

2. Secondary law material

Namely legal materials that provide explanations for primary legal materials (legal science books, legal journals, legal reports, printed or electronic media).

3. Tertiary law material

Namely legal materials that provide explanations for primary legal materials and secondary legal materials (law drafts, legal dictionaries and encyclopedias).

Most of the legal materials as normative studies can be obtained through searching various legal documents¹³The primary legal materials in this writing are:

1. 1945 Constitution of the Republic of Indonesia;
2. Code of Civil law;
3. the Criminal Code;
4. Law Number 10 of 1998 concerning amendments to Law Number 7 of 1992 concerning Banking
5. Law Number 8 of 1999 concerning Consumer Protection
6. Law Number 36 of 1999 concerning Telecommunications
7. Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 as concerning Information and Electronic Transactions
8. Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions
9. Government Regulation Number 58 of 2001 concerning Guidance and Supervision of the Implementation of Consumer Protection
10. Presidential Regulation Number 50 of 2017 concerning the National Strategy for Consumer Protection

Meanwhile, the secondary legal materials used in this paper are books or literatures that contain theories and views from experts relevant to the problems studied. As well as tertiary legal materials that provide instructions and explanations in this writing are legal dictionaries, language dictionaries, encyclopedias and the internet which are described on the last page of this writing.

5. Data collection technique

The data obtained from this research areData collection is done by searching secondary data in the form of collecting various statutory provisions, and conducting library research. Collecting data from various legal materials, interviews, documents that support the object of research. and accessing the internet related to the problem.

6. Data Analysis and Presentation

The legal materials obtained were analyzed qualitatively. Qualitative analysis¹⁴ used to analyze the meaning of the data that appears on the surface, meaning that qualitative analysis is not used to explain a fact but only to understand the fact. So the data obtained is interpreted by referring to the theoretical framework, concepts, and views of relevant scholars,¹⁵then presented in the form of a descriptive description.

III. RESULTS AND DISCUSSION

1. Responsibility

The responsibility of business actors for products that harm consumers is a very important matter in consumer protection law. Most of the cases that exist today, consumers are the ones who suffer the most losses due to the products of the business actors themselves.

¹³Bahder Johan Nasution, *Legal Research Methods*, (Bandung: CV. Mandar Maju, 2008), p. 98.

¹⁴Burhan Bungin, (ed), *Qualitative Research Methodology*, (Jakarta: Raja Grafindo Persada, 2006), p. 54

¹⁵Ade Saptomo, *Op. Cit.*, hlm. 75.

To find out more clearly about the responsibilities of business actors, we should understand more deeply about the definition of responsibility.

According to the Big Indonesian Dictionary (KBBI) responsibility is the obligation to bear everything, if anything happens, it can be prosecuted, blamed and sued. In the legal dictionary, responsibility is a must for someone to carry out what has been required of him.¹⁶ According to civil law, liability is divided into two types, namely errors and risks. Thus, it is known as liability without based on fault and liability without fault, which is known as risk responsibility or absolute responsibility (strick liability). The basic principle of responsibility on the basis of error implies that a person must be responsible because he made a mistake that harms others. On the other hand, the principle of risk responsibility is that the plaintiff's consumer is no longer required but the defendant's producer is directly responsible for the business risk.

The forms of accountability of business actors in Article 19 of Law Number 8 of 1999 are formulated as follows:

- a. Determine the responsibility of business actors to provide compensation to consumers as a result of damage, pollution and or consumer losses due to consuming goods and/or services produced or traded
- b. Compensation that can be given can be in the form of a refund or replacement of goods and/or services of a similar or equivalent value, or health care and/or compensation;
- c. The grace period for granting compensation is seven days after the date of the transaction;
- d. The provision of compensation does not eliminate the possibility of criminal charges based on further evidence regarding the existence of an element of error;
- e. The provisions as regulated in paragraphs (1) and (2) shall not apply if the business actor can prove that the error is the fault of the consumer.

When viewed from the point of view of the Consumer Protection Law, the principles used in responsibility include the following:

- a. Principle of Responsibility Based on Negligence or Negligence
- b. Principle of Liability Based on Default
- c. Absolute Responsibility Principle

2. Businessmen

Consumer protection law, business actors and consumers have a very important role to support business travel in Indonesia. Producers are not only defined as the maker/factory that produces the product, but also those related to the delivery or distribution of the product until it reaches the consumer. In other words, in the context of the producer is defined broadly.¹⁷

Law Number 8 of 1999 also states that the definition of a business actor in Article 1 point 3 is any individual or business entity, whether in the form of a legal entity or not a legal entity that is established and domiciled or carries out activities within the jurisdiction of the Republic of Indonesia, either alone or on its own. or jointly through agreements to carry out business activities in various economic fields. In Law Number 8 of 1999 it is explained that business actors are companies, corporations, BUMN, cooperatives, importers, traders, distributors, and others.

3. Electronic Transaction

The internet is a virtual world/virtual world that has a very distinctive community, which is about how computer technology applications take place online when the internet

¹⁶Andi Hamzah, *Legal Dictionary*, (Bogor; Ghalia Indonesia), p. 26

¹⁷Janus Sidabalok, *Consumer Protection Law in Indonesia*, 1st Edition, (Bandung: PT Citra Aditya Bakti, 2006), p. 3.

user presses or has been connected to an existing network. In this context, the inherent legal aspect of the e-commerce mechanism is interacting with internet network applications used by parties conducting transactions through the e-commerce system.¹⁸

According to the Electronic Commerce Expert Group (ECEG) Australia "Electronic Commerce is a broad concept that covers any commercial transaction that is effected via electronic means and would include such means as facsimile, telex, EDI, internet and telephone".¹⁹ Based on the understanding of ECEG-Australia, e-commerce includes trade transactions through electronic media. In the sense of the word, not only internet media is meant, but also includes all trade transactions through other electronic media such as fax, telex, EDI and telephone.

4. Internet Site

Initially the internet was used for the purposes of the Department of Defense America (Department of Defense America) with the aim of facilitating and accelerating the exchange of intelligence information. By collaborating with several IT companies and universities in America called the Advanced Research Project Agency Network (ARPANET).²⁰ Then the internet has developed and its use has expanded to business, industrial, and household activities around the world. The development and progress of the internet has encouraged progress in the field of information technology. The increasingly widespread use of the internet in business, industrial and household activities has changed people's views. Where the above activities were initially monopolized by physical activities, they have now shifted to activities in cyberspace (cyber world) that do not require physical activity. In the midst of increasingly integrated communication globalization (global communication network) with the increasing popularity of the internet, it seems to have made the world shrink (shrinking the world) and increasingly fading state boundaries along with sovereignty and social order, as well as the development of technology and information in Indonesia.

5. Consumer protection

In various literatures found two terms regarding the law relating to consumers, namely consumer law and consumer protection law. According to Az. Nasution, consumer law is:

"All of the principles and rules governing the relationship and problems of providing and using products (goods and/or services) between providers and users, in social life."²¹

Meanwhile, consumer protection law as a special part of consumer law is: "All of the principles and rules that regulate and protect consumers in the relationship and problems of providing and using consumer products (goods and/or services) between providers and users in social life.

¹⁸Electronic Commerce Expert Group (ECEG) quoted by Michael SH Neng, "Understanding Electronic Commerce From A Historical Perspective, Communications of the Association for Information Systems" (Volume 12, 2003) p.104 <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.131.7273&rep=rep1&type=pdf> accessed 05 July 2022.

¹⁹Electronic Commerce Expert Group, quoted by Bagus Hanindyo Mantri, Legal Protection of Consumers in E-Commerce Transactions, (Diponegoro University, 2017) p. 24

²⁰Trias Setiawan Rizky, History of the Internet and the Development of Online Media in Indonesia. Kompasiana.com. 17 June 2015 http://www.kompasiana.com/1103/sejarah-internet-dan-perkembangan-media-online-di-Indonesia_54f88619a3331148098b45b8 accessed 05 July 2022

²¹Az. Nasution, Consumer Protection Law, An Introduction, Cet.1, (Jakarta: Diadit Media, 2007), p. 37.

6. Legal Protection Theory

Satjipto Rahardjo said that the law exists in society to integrate and coordinate interests that may conflict with one another. The coordination of these interests is carried out by limiting and protecting these interests.²²

The law protects a person's interests by giving him the power to act in fulfilling his interests. The granting of power, or what is often referred to as this right, is carried out in a measurable manner, in breadth and depth. According to GW Paton, an interest is the object of a right, not only because it is protected by law, but also because there is recognition of it. Rights do not only contain elements of protection and interest, but also will.²³ Regarding the function of law to provide protection, Lili Rasjidi and B. Arief Sidharta said that the law was grown and needed by humans precisely based on the product of human judgment to create conditions that protect and promote human dignity and to enable humans to live a normal life in accordance with their dignity.²⁴

Meanwhile, according to JCT Simorangkir and Woerjono Sastropranoto, law is a coercive regulation that determines human behavior in a society made by authorized official bodies.²⁵ Mochtar Kusumaatmadja, an adequate understanding of law does not only view the law as a set of rules and principles that regulate human life in society, but must also include the 20 institutions or institutions and processes needed to realize the law in reality.²⁶ The growing awareness of the state to provide legal protection for consumers who are in a weak bargaining position, begins with thinking about various policies.²⁷

In Indonesia, consumer protection can be carried out in various forms, one of which is in the form of legal protection. Legal protection for consumers is the most important protection, this is because the law can accommodate various consumer interests, besides that the law has coercive power so that it is permanent because of its constitutional nature which is recognized and enforced in people's lives.

IV. CONCLUSION

In practice in Indonesia, in an online site, whether it is a provider of electronic information services or buying and selling transactions, the business actor who owns the site includes an exoneration clause which is located on the online site, which does not immediately appear on the monitor screen when internet consumers open an internet site. Usually the clause of a site is located at the bottom of the site display where the writing uses a font size smaller than the main article of the site and there are also sites that directly incorporate the clause in a term and condition of an internet site. In terms of content, the contents of the disclaimer have been determined unilaterally by the electronic system operator or business actor. Electronic system users/consumers cannot negotiate the contents because the agreement is already printed on the screen. Efforts to gain access to the responsibilities of business actors were adapted by Law Number 8 of 1999 concerning Consumer Protection by providing for business actors to pay compensation for defective products. Article 19 paragraph (1) of the UUPK states "business actors are responsible for providing compensation for damage, pollution, and/or consumer losses due to consuming

²²Satjipto Rahardjo, *Legal Studies*, (Bandung: Citra Aditya Bakti, 2000) p. 53.

²³GW Paton quoted by Satjipto Rahardjo, *Ibid*, p. 54.

²⁴Lili Rasjidi and B. Arief Sidharta, *Philosophy of Madzab Law and Reflection*, (Bandung.: PT. Teen Rosda Karya, 1994), p. 64.

²⁵JCT Simorangkir and Woerjono Sastropranoto, quoted by Hasanuddin, *Da'wah Law*, (Jakarta: Science Guidelines Jaya, 1996), p. 12

²⁶Mochtar Kusumaatmadja, quoted by Nandang Alamsah Deliarnoor, *Introduction to Legal Aspects in Archives*, (Jakarta: Open University Publishing Center, 2007) p. 4

²⁷Paulee A. Coughlin, quoted by Abdul Halim Barkatullah, *Consumer Rights as Economic Constitutional Rights of Indonesian Citizens*, scientific journal, p. 7.

goods and/or services produced or traded." Thus, the UUPK allows consumers to file a claim against business actors to be responsible for the losses they suffer. The existence of this demand in principle is the implementation of the principle of product responsibility.

The regulation regarding the inclusion of standard clauses is intended by law as an effort to place an equal position with business actors based on the principle of freedom of contract. Business Actors who use standard clauses are required so that the location and form of the standard clauses are not difficult to see or cannot be read clearly, including disclosures that are not difficult to understand. Thus, standard clauses are seen as violating the law if they are carried out when the location, form or disclosure is difficult to see, read or understand (Article 18 Paragraph 2 UUPK). Every agreement in terms of the relationship between business actors and consumers, which includes standard clauses in it, must pay attention to the provisions of Article 18 paragraph (1) of the UUPK. The consequences of violating article 18 are null and void of the agreement, unless a clause of separability of provisions is included, then what is null and void is only clauses that are contrary to article 18 of Law Number 8 of 1999 concerning Consumer Protection. The Information and Electronic Transaction Law implements the principles of consumer protection in its articles which aim to provide legal certainty and protection for consumers in conducting electronic transactions. stipulates that: Business actors who offer products through Electronic Systems must provide complete and correct information relating to contract terms, manufacturers, and products offered. then what is null and void is only a clause that contradicts Article 18 of Law Number 8 of 1999 concerning Consumer Protection.

Effective supervision and law enforcement to ensure that business actors comply with the provisions related to consumer protection contained in the laws and regulations. The formulation of an effective regulatory framework is part of efforts to create a healthy business climate and relationship between business actors and consumers. The preparation of the regulatory framework includes: (1) Amendments to Law Number 8 of 1999 concerning consumer protection, (2) Mapping of compliance with laws and regulations in priority sectors with Law Number 8 of 1999 concerning consumer protection and, (3) Preparation of standard operating procedures related consumer complaint mechanisms in nine priority sectors

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