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**LEGAL PROTECTION OF ONLINE BUSINESS TRANSACTION  
(E-COMMERCE) DURING THE COVID-19 PANDEMIC IN INDONESIA**

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**Abstract**

*In Indonesia, the electronic business (e-commerce) transaction has shown a rapid development after the application of the social distancing in the efforts to handle the spread of the coronavirus disease (Covid-19). Initially, the increase of the people's interests to shop online was to buy masks and hand sanitizers for protection against the disease. Then, there was an increase of interest to buy stationery (as there is the trend of working and studying from home) and also medical equipment. Yet, in its application, there are many cases of where the customers experienced loss due to the use of this type of business transaction. There are legal protections on electronic transaction which have been violated during the time of the Covid-19 pandemic. These transactions are regulated on the Constitution No. 11 of 2007 regarding Information and Electronic Transaction and also Article 1365 of Burgerlijke Wetboek (BW). The stipulations of the BW Article 1365 may be applied in cases which violate the law in online business transactions (e-commerce). To fill in the legal void, there needs to be an extensive legal interpretation.*

**Keywords:** *Legal Protection, E-commerce, Covid-19.*

**A. INTRODUCTION**

Enactment of the social distancing by some companies brought some impacts towards the trend of online shopping in Indonesia. The widespread infection of the Covid-19 pushes companies to apply the “work from home” activity. This change of trend, where people now work from home, also influences the trend of the Indonesian people's interests in shopping online. For example, the high intensity of the online meeting and video conferences may be reflected from the increase of the people's interests in buying webcams.

Webcams are not only used by the people who work from home. Yet, they also support the online learning and teaching process which is applied by the schools and educational institutions in Indonesia during this pandemic. The electronic business transactions in Indonesia have shown rapid development. In this case, the internet technology, especially e-commerce, has brought significant influences towards the

global trade. Actually, e-commerce already had the ability to attract many consumers in Indonesia, even before the Covid-19 pandemic. It is one of the main supporters which makes Indonesia have the highest rate of digital economy in Southeast Asia, which reached \$40 billion on 2019. These numbers are predicted to reach \$130 billion by 2025.

The rapid development of electronic commerce or the e-commerce is influenced by some factors.<sup>1</sup> First, electronic commerce has the ability to reach much more customers. The customers may access all information continuously.<sup>2</sup> Second, electronic commerce pushes the creativity of the merchants quickly and accurately. The information distribution is communicated periodically. Third, the electronic commerce creates high efficiency. It is cheap and informative. Fourth, the electronic commerce may increase the customer satisfaction with services which are quick, easy, safe, and accurate.<sup>3</sup>

It can be said that trade using e-transactions bring many benefits to various parties<sup>4</sup>. This type of transaction attracts high interests, not only for the producers but also the consumers. Generally, the electronic commerce has brought special benefits to the consumers and the producers. For the consumers, the electronic commerce increases the chances on how they obtain the products they want. Meanwhile, for the producers, the electronic commerce has brought ease in the process of marketing certain products.

The interests of shopping online for medical equipment has increased significantly during this pandemic. For example, hand sanitizers which are products used to prevent the spread of this virus attracts the highest rate of customers. Then, there is an increase for the interests of buying Vitamin C. It is often because the society thinks that it is an urgent need. Unfortunately, many people also experienced fraud in the process of carrying out online transactions.

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<sup>1</sup> Hetty Hasanah, Analisis Hukum Tentang Perbuatan Melawan Hukum Dalam Transaksi Bisnis Secara Online (E-Commerce) Berdasarkan Burgerlijke Wetboek Dan Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik, *Jurnal Wawasan Hukum*, Vol. 32, No. 1, Februari 2015, hlm 38

<sup>2</sup> Sanusi, M arsyad, *E Commerce: Hukum dan solusinya*, PT, Mizan Grafika sarana, Bandung, 2001 hlm 22

<sup>3</sup> Gunawan Widjaja & Ahmad Yani. *Hukum Tentang Perlindungan Konsumen*, PT. Gramedia Pustaka Utama, Jakarta, 2000, hlm 14

<sup>4</sup> M. Arsyad Sanusi, *Transaksi Bisnis dalam Electronic Commerce*, *Jurnal Hukum*, Nomor 16 Vol 8, 2001. Hal 187

Initially, the increase of online shopping happened to products which are used to prevent the spread of the virus, such as mouth masks and hand sanitizers. An increase up to 100% happened to retail shops. This makes many customers choose to buy hand sanitizers online in e-commerce platforms. The prices of masks and hand sanitizers have increased since January, which was the start of when the Covid-19 cases reached Singapore and Malaysia. Other products which have experienced increase in the customers' interests are Dettol and Lysol products. This is because during the Covid-19 pandemic, there is the suggestion to use these products as disinfectants to kill the coronavirus. The sales of the body thermometers have also increased. This is because one of the symptoms being positive with the covid-19 is that a person has a high body temperature, which is 37,8°C or more. Thus, many consumers look for this product.

The second increase in the interest of online shopping during the covid-19 pandemic happened to stationery and papers. It also increased because there was the trend to study and work from home. There is also an increase of online sales to sports equipment, games, etc. The trend of online sales for foods and drinks during the lockdown or the social distancing has also been predicted. Even though the use of internet in the e-commerce transaction during the covid-19 pandemic brought many advantages, it does not mean that the electronic commerce is a problem-free system, especially in a country which has not yet regulated the electronic commerce. In its practice, there are many cases where the consumers experienced loss due to the use of the internet media in carrying out the sales transaction. Based on the explanation above, thus the focus of this research's problem is: How is the legal protection for online business transactions (e-commerce) during the covid-19 pandemic in Indonesia.

## **B. RESEARCH METHOD**

The method used in this research is the normative legal research method. It is a procedure of scientific research which is used to find truth based on the scientific logics from the normative aspect. The normative research is a process in finding the law, the legal principles, or the legal doctrines to answer the legal issues being faced. The normative legal research is carried out to produce new argumentations, theories, or concepts as the prescription in solving the problems being faced.

### C. DISCUSSION

Because of the information and technology development, business transaction is no longer limited to real or conventional transactions. Yet, it may also be carried out using the electronic media, in this case the internet. This is then known as the term e-commerce.<sup>5</sup> Based on the stipulations of the Constitution No. 11 of 2008 Article 1 number (2) regarding Information and Electronic Transaction (which will hereinafter be called the IET Constitution), it is said that the electronic transaction is a legal action which is carried out using a computer, computer network, and/or other electronic media.<sup>6</sup> Parallel to that, the electronic transaction which is part of the electronic commerce transaction must be written in an electronic contract which binds the parties, based on the stipulations of the IET Constitution, Article 18.

Electronic business transaction (electronic commerce/e-commerce), which is part of electronic business (a business which uses electronic transmission), may be defined using the trade terminology (e-commerce).<sup>7</sup> E-commerce may generally be defined as any type of trade of goods and services using the electronic media. Apart from what is mentioned above, this activity of e-commerce is a part of the e-business. The e-commerce transaction involves many parties, both which are involved directly or indirectly, which are merchants, consumers or card holders, banks, providers, and certification authorities.<sup>8</sup> Regarding the legal protection on the validity of an electronic transaction, it must be first understood that there should be a clear legal basis of that transaction. The electronic transaction is born based on the principle of the freedom to make contracts, as regulated in Article 1338 clause (1) *Burgerlijke Wetboek* (BW). It explains that every person has the freedom to determine the form, the type, and the contents of an agreement/contract, so long as it fulfills the requirements which make a contract valid.<sup>9</sup>

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<sup>5</sup> Sutiyo, Bambang. (2008). "Penyelesaian Sengketa Bisnis Melalui *Online Dispute Resolution* dan Pemberlakuannya di Indonesia." *Mimbar Hukum*, 20 (2).

<sup>6</sup> Zein, Yahya Ahmad. (2009). *Kontrak Elektronik dan Penyelesaian Sengketa Bisnis E-Commerce dalam Transaksi Nasional dan Internasional*. Bandung: CV. Mandar Maju, hal 30

<sup>7</sup> Ramli, Ahmad M. (2006). *Cyber Law dan Haki dalam Sistem Hukum Indonesia*. Bandung: PT. Refika Aditama.

<sup>8</sup> Chandra, Adel. (2014). "Penyelesaian Sengketa Transaksi Elektronik Melalui *Online Dispute Resolution* (ODR) Kaitan Dengan UU Informasi dan Transaksi Elektronik No. 11 Tahun 2008." *Jurnal Ilmu Komputer*, 10 (2).

<sup>9</sup> Hernoko, Agus Yudha. 2010. *Hukum Perjanjian Asas Proporsionalitas dalam Kontrak Komersial*, Jakarta: Kencana.

The stipulations of Article 1320 BW do not violate the public order nor the morality. Thus, all agreements made by the two parties become regulations for the parties who made it. Also, in an electronic transaction, the parties involved in that transaction are legal subjects, who are related through the internet as a media. Any person and any institution are free to create contracts and determine the form, the method, and the contents of that agreement. It may be carried out based on the agreement between the parties. Both parties make a binding contract in the form of transaction using internet as the media, with the contents of the contract agreed upon by the parties via the internet also.

Article 1320 of BW stated that the validity requirements of an agreement consist of: An agreement between the two parties. There are some theories regarding the agreement, which are *Uitings theorie* (the theory when a desire appears), *Verzend theorie* (the theory when sending a letter of acceptance), *Onvangs theorie* (a theory when receiving a letter of offer), and *Vernemings theorie* (a theory when knowing the letter of acceptance). Then, there is the capability of both parties, a particular item, and a lawful cause. The agreement between the two parties must contain the similarity of desire between them, either stated out loud or silently. If the agreement happens due to force, oversight, or errors, thus the agreement may be cancelled. This means that the agreement is still valid until it is annulled by the judge with the request from the parties. Thus, this agreement is one of the subjective agreements for the validity of an agreement. This also applies to the electronic transaction. It is an agreement which happens after an agreement between the two parties which carry out the transaction. Based on the principle of consent, the agreement is deemed to exist with the birth of the agreement to make a certain contract.

In the legal protection of e-commerce transaction during this Covid-19 pandemic, there must also be the capability of the parties related. It is a general requirement to carry out valid legal actions. A person is said to be legally capable (*rechtsbekwaamheid*) when he/she has reached adulthood, he/she has a healthy mental state, and it is not prohibited by the constitutional regulations. According to the Constitution No. 1 of 1974 Article 47 regarding Marriage, an adult is someone who has reached 18 years of age or has been married. A healthy mind means that the person is not mentally disabled, he/she is not a waster, and he/she is not under a

remission as written in Article 1330 jo 433 BW. If the requirement of capability which is also a subjective requirement is not fulfilled in an agreement, thus this agreement may be cancelled.

Someone who is legally capable (*rechtsbekwaamheid*) does not always have the power to carry out legal actions (*rechtsbevoegheid*), thus, *rechtsbekwaamheid* is a general requirement in carrying out legal activities. Meanwhile, *rechtsbevoegheid* is the special requirement. Also, in an online transaction, the related parties must fulfill the requirements of capability. But, in the reality, one party does not know whether or not the other party has fulfilled the requirement of legal capability. Yet, in this electronic transaction, it must be based on the element of mutual trust between one party and the other.

The particular item in the online agreement is the object which is discussed in the agreement. It is the goods sold. This is regulated in Article 1332 BW, which explains that the item which becomes the object of an agreement must have clear information on its type. Meanwhile, its amount does not have to be determined, as long as it can be determined and counted. Further explanation is regulated in Article 1334 clause (1) BW, which explains that new items which will come in the future can also be objects of the agreement. Meanwhile, Article 1334 clause (2) BW explains that the items which will become a right of someone's will to someone else as the heir cannot be an object of an agreement, as it is regarded as violating the morality. The exception is if before that, the item has been granted by the owner to the prospecting heir. In an agreement in which the objects violate the stipulations stated above, as the objective requirement to validate an agreement, thus the agreement is deemed invalid for the sake of law. It means that from the start, the agreement is deemed non-existent. Thus, there is no basis for the parties to file each other to the court in front of the judge. In an online transaction, the object under the agreement must be clear, both in the aspects of its type and its amount.

There are some agreement laws which apply in Indonesia. Apart from the principle of the freedom to make contracts, there are some other principles, which are the principle of consent, the principle of trust, the principle of binding power, the principle of legal equality, the principle of balance, the principle of legal certainty,

the principal of morality, the principle of appropriateness, and the principle of customs. Thus, the principles which are carried out electronically are also bound by these principles.

There were problems in the e-commerce transactions during the Covid-19 pandemic. It happened in the sales of masks and hand sanitizers. The transaction contract had been agreed upon, and the consumer had transferred the money. Meanwhile, the masks they ordered were not sent. The consumers realized that they became victims of fraud as there is an embezzlement in buying the masks online. The victims then reported this case to the Police Force to be investigated. Often, such urgent moments are used by perpetrators to carry out the crime of fraud. They use the opportunity of when the society need masks. The perpetrators use the chance to 'sell' masks. After the victims send the money, the items are not sent to them.

This action is a violation of law. It is regulated in Article 1365 of the Civil Code. It can also be used as the basis in proposing for compensation for this action, as it is regarded as a violation of law in the e-commerce transaction process. The dispute resolution may be carried out through the litigation method via the justice system by filing a case. It may also be resolved using the non-litigation method outside of court, for example through negotiation, mediation, conciliation, or arbitration.

An action which violate the law in an online business transaction (e-commerce) is said to happen, if there is an action of one of the parties which intentionally brings loss to another party. The action is carried out online in the virtual world, via electronic data or instruments, both using electronic information or electronic documents with the many methods in the virtual world. There is the usage of the electronic data as the media to send messages/data thus, one can send or receive information easily and simply, both in the form of analog or digital electronic data. This is parallel with the definition that e-commerce is a trade system which uses electronic mechanisms in internet network, which becomes a new method in the electronic or the online business world

The occurrence of the actions which violate the law in the online business transaction (e-commerce) which brings such loss needs some legislations which will become the legal basis for the claim for compensation. *Burgerlijke Wetboek* and the

IET Constitution have crucial roles in this phenomenon. This is because there is not yet any explicit regulations on the claim for compensation due to law-violating actions in online business transactions (e-commerce) in the Indonesian constitutional regulations. But, based on the mandate of the Constitution on Judicial Power, it is stated that the judge must extract the values which live in the society, so that there is no legal void. This becomes the basis on how the judges cannot reject any case which is filed to court with the reason that there are not yet any regulations, or that the regulations are not complete.

The extensive interpretation of law or the action of expanding the word meanings in a legislation becomes one of the ways to handle this problem. Thus, Article 1365 BW may be used as the legal basis on the claim for compensation for law-violating actions in online business transaction (e-commerce). This can be carried out with the support of electronic data-based evidences which are acknowledged as valid evidences as in the Indonesian legal procedures. It has been regulated in Article 5 of the IET Constitution. Because of that, BW and the IET Constitution have crucial roles in facing the obstacles regarding the compensation claims for law-violating actions in the online business transactions (e-commerce).

#### **D. CONCLUSION**

The legal protection on electronic transaction during the Covid-19 pandemic has resulted to law-violating actions. Apart from the stipulations in the Constitution No. 11 of 2008 regarding Information and Electronic Transaction, it is also regulated in Article 1365 BW. Stipulations of Article 1365 BW may be applied in law-violating cases in online business transactions (e-commerce). To fill the legal void, there needs to be an extensive interpretation of the law. In the application of the transaction, the parties must pay attention to the aspect of caution in making an e-commerce business agreement. The obstacles in the compensation claim in the e-commerce transaction may be resolved using compensation which appear in the e-commerce transaction, by taking note of the evidencing law of the material and immaterial losses which happened, and also improve the e-commerce agreement. It must fulfill the validity requirements of an agreement as regulated in Article 1320 BW. Plus, it must not violate public order nor the morals.



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