

# JURNAL 8

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# Legal Protection for Consumers against Fraud on E-Commerce: A Comparative Law Analysis

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Technology development has an impact on various legal aspects in the world. Trade transaction was one of the aspects that developed rapidly when the internet began to be introduced. Trade transactions are no longer limited by areas at this time and no longer have to confront the parties directly. Accessibility of trade through an electronic system for the community can improve the community's economy, but also faces the act of cheating (fraud) from irresponsible parties. Fraud on e-commerce is making it hard for consumers who can't do anything to ask for responsibility, because often, there is no proof. The act of fraud that is occurring harms the consumers, and there is the emergence of issues concerning legal protection for consumers and the responsibility of an e-commerce company of the act of cheating (fraud). Arrangements related to e-commerce which were widespread in some different legislation made the problem with the regulation of synchronisation of e-commerce, and it needs adjustment with the regulation of International law, as an attempt to create protection and certainty while doing transactions on e-commerce. Fraud prevention and tackling on e-commerce have some issues, because of former legal regulations set about the real legal actions and they must adapt to something that is virtual. E-commerce has become a part of national and international commerce, so regulation of the e-commerce industry has to be comprehensive. The content is broad and related to the importance of harmonisation and regulatory unification on national and international law and it needed review from various arrangements regarding fraud actions of E-commerce.

**Key words:** *The Protection of the Law, Fraud , E-Commerce.*



## Introduction

The emergence of digital technology in world information and communication affects all aspects of human life. The business world is one of the fields in which much has changed, influenced by technological development. The impact of the development of technology is the creation of new business opportunities, so that entrepreneurs intensively utilise the chance to be involved. Community interest in the change that is going on with consumers, against their social life at this time is influenced by the development of information technology, the introduction of the internet and that they follow the on-line community.

A challenge for a company that is engaged in, is developing a technology business market for produce not fully developed (David and Wina, 2015). The draft forms a new transaction conducted electronically, otherwise known as e-commerce. E-commerce can be defined as all transactions of trade or services (goods and trade of goods and services) and using electronic media (Imam, 2017). E-commerce is a form of progress in technology and a target for thieves to gain by cheating.

In e-commerce, cheating can be done by all parties involved in making transactions, namely the seller, the buyer, as well as an employee at the company of e-commerce. Some cases related to allegations of fraud in e-commerce in Indonesia is in the implementation of flash sales by platform market places, that cause a lot of customers not being able to obtain goods sold at bargain prices at the time of the flash sale and can cause consumers to be harmed.

The next problem is related to the consumer protection in the transaction of e-commerce. This is ineffective because of the law arrangement in Indonesia. There is still room for the thieves to commit inequity. Cases of flash sales were cases in which consumers were wronged and often consumers experienced confusion about the cheating that befell them. In comparison to the arrangements relating to e-commerce and cheating, we can see that some laws are better than others.

The following discussion is based on an author interested in examining issues about: "Legal Protection for Consumers Against Fraud on E-Commerce: A Comparative Law Analysis".

## Method

Research laws are for scholarly activities based on a method of, sistematika, and certain thoughts, whose aim is to learn one or some symptom of a law, with a way to analyse this (Abdulkadir, 2004). This is a descriptive, analytical research which is rather an exposure, and aims to get a description of the complaints about the state of the law applicable in a particular place and at the time specified occurring within the community (*Ibid*). Methods of intervention will be used are normative, juridical, the focus of juridical law, inventory and normative, and



of legal doctrine, in which the discovery of the law is on a case in concreto, systematic, law synchronisation, legal level comparison, law and law enforcement history (Bambang).

This approach can be carried out through the study of literature (library research) by prioritising the secondary data, consisting of prices of staples pushed up by the members of primary law, a material of wool or secondary law, and as materials for law tertiary. The necessary data in this research is taken from secondary data.

Consisting of material law, the law primary materials binding, material secondary law, the material provides an explanation on material primary law, as literature, supporting books, accompanied journals, law related problems, with researchers making tertiary material law, materials' guide to the material primary and secondary law, material more known as the reference material law or referral law (Soerjono and Sri, 2006).

Data collection is done with the literature study which covers primary sources which is relevant to the problems. Regulations and secondary sources, namely literature of jurisprudence and other relevant legal articles are used (Abdulkadir). With the problems, the literature study carried out, through steps of library identification, data sources identification of the law is necessary, as well as an inventory of the law.

The data collected is then processed through the inspections phase, editing tagging, coding the preparation of (reconstructing), systematisation based on the sub-principal subject, the identification of problem (systematising) and formulation pertaining to the treatment of the subjects.

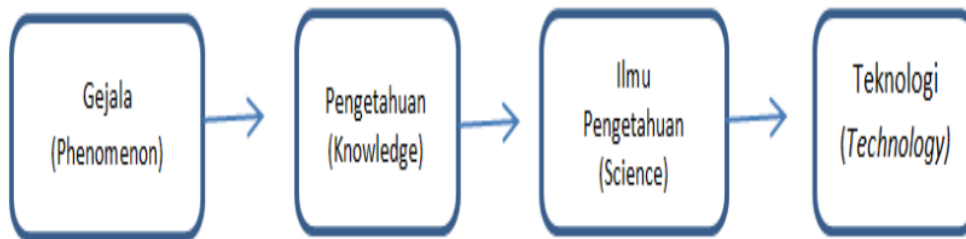
## Results and Discussion

The enthusiasm of the public with the development of the digital world, has made all aspects of life already apply a technology that provides facilities for society to fulfil life's needs. Technology is derived from the greek. It is the application of material the process of, and techniques to make life easier (David and Wina). Human activity and human life is flourishing and advancing, and forms of civilisation can be categorised into four waves as suggested by Alvin Toffler which are (*Ibid*) :

1. The era of agriculture,
2. The industrial age,
3. The information age, and
4. The era of creativity.

The emergence of the technology is shown in picture 7.1 (David and Wina)

**Picture shows that began 7.1 Technology of the Phenomenon**



The advancement in technology is so fast in trade, it must be accompanied by legal decisions, especially in developing countries which must adapt the law on the regulation of the international law, to maintain law harmonisation. The characteristics of activity in the cyber world are (Danrivanti, 2017):

1. Easy,
2. Spreads very fast and extends so that it can be accessed by anyone and wherever,
3. Desktruktif can is matter of loading contempt and / or a libel using electronic media is beyond remarkable for having an infinite viktimisasi pattern.

Cyber activities are virtual events that influence and are open, although the electronic media is thus subject to being classified also as one which has committed visibly law (Ahmad, 2010). The electronic trade also related to the prerequisite law the article 1320, arranged on Indonesian Civil Law, are (Lina):

1. Agreed those who fastens,
2. Skills to make an engagement,
3. A particular thing, and
4. Cause.

Quoted from law review articles on Columbia said:

“A handful of digital platforms mediate a growing share of online commerce and communications. By structuring access to markets, these firms function as gatekeepers for billions of dollars in economic activity. One feature of dominant digital platforms share is that they have integrated across business lines such that they both operate a platform and market their own goods and services on it. This structure places dominant platforms in direct competition with some of the businesses that depend on them, creating a conflict of interest that platforms can exploit to further entrench their dominance, thwart competition, and stifle innovation”.

One of the laws in the arrangement of e-commerce in Indonesia is found in regulation Law of The Republic of Indonesia Number 7 of 2014, concerning trading on article 1 numbers 24, which states that trade through an electronic system is a trade whose transactions are carried out through a series of electronic devices and procedures. The law of The Republic of Indonesia



Number 7 of 2014 concerning trading, arranged that each business operators should be able to provide data and/or complete information and right.

A discussion about a series of electronic devices and procedures and on the details have to be associated with Law of The Republic of Indonesia Number 19 of 2016, concerning amendment to law Number 11 of 2008, concerning Electronic Information and Transactions (UU ITE) legislation as a product to lead to the arrangement in the utilisation in the field of information technology and electronic transaction.

Article 1 UU ITE, says that electronic transaction means a legal action taken using a computer, a computer network, and other electronic devices/or the media. Next, is the government regulation no 82 years 2012, on the implementation of the system and electronic transaction. This is a discussion on trading activity involving business operators and consumers in the process. The imbalance between entrepreneurs and consumers makes the position of consumers weak. Many entrepreneurs perform various ways of gaining advantage without regarding the interest to the consumers.

The transactions that take place were originally the upcoming meeting between the seller and buyer and were directly conducted at this point in time by the support of the progression of the technology telecommunication and informatics. The transaction took place as if they did not get to know the boundaries. The seller and buyer do not have to encounter each other directly to do the transactions of commerce. Ease is given to them in the process, with also the factor of the risk which is to be received by the consumer. The consumers have to come around, as well as the ability and self-reliance to able to protect against the parties that had committed perverseness and iniquity. The chance to move within, commits perverseness and iniquity, which was carried out by the e-commerce platform, which can harm consumers especially carried out by the offender in various types of acts. There are 5 (five) kinds of deceit which one needs to be alert about, this was conducted by the prevention of e-commerce Indonesia and among the companies (Putri, 2019):

1. The willful injustice of oppressors to the seller,
2. The willful injustice of oppressors to civil servants that they employ,
3. An overview of the law of falsehood,
4. The willful injustice of oppressors' delivery, and
5. The willful injustice of oppressors of the transactions that take place.

Business players to sell their products, have all kinds of priorities raised in one of the targets, which are points campaign to promote the bos program. An instrument of a promotion that is used on a platform e-commerce is a flash sale software. The flash sale is in place a strategy of the selling of goods whose price is lower with a limited extent of time.

The form of the campaign to promote the bos program made a platform out of it, so a lot of e-commerce was also included, because the product was discounted, there was a race to get their





goods with a very low-price tag. The provision of prices that are widely sloping seolah-olah, can be beneficial if customers would start soon, but in practice a lot of consumers as a party, were the most will be done to anyone. One example of the case of a flash sale, was quoted at m.detik.com, CEO tokopedia, who spoke up about the case of the flash sale that has gripped tokopedia. According to CEO Tokopedia, there are anggota tokopedia team with evil on 49 products sold on the campaign flash sale. These violations were found when tokopedia did an internal audit which was described as a routine they do. ([https://m.detik.com/inet/cyberlife/d-4186244/bos-tokopedia-buka-bukaan-soal-kasus-flash-sale?\\_ga=2.60829932.1558259763.1568994361-1687429238.1565878095](https://m.detik.com/inet/cyberlife/d-4186244/bos-tokopedia-buka-bukaan-soal-kasus-flash-sale?_ga=2.60829932.1558259763.1568994361-1687429238.1565878095)).

Based on the (UNCITRAL) fashion law on electronic commerce with a guide to the enactment of 1996, it stated that:

“the term “commercial” should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature whether contractual or not. Relationships of a commercial nature include, but are not limited to the following transactions : any trade transaction for the supply or exchange of goods and services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; ; licensing ; investment; financing; banking; insurance; exploitation ; agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.”

UNCITRAL law on electronic commerce with a guide to enactment 1996, is to bring into reality the spiritual harmonisation law with the creation of a positive. In Indonesia, as in other developing countries in the world, there is still much need to improve public facilities located in the perspective of the arrangement of the laws on e-commerce. A piece of some arrangement about the transactions of commerce electronic sometimes causes uncertainty in the law.

The detailed regulation of e-commerce in Indonesia that was widespread in a few kind of rules undang-undangan made, the analysis must be done afterwards in various undang-undang, about the offense as what has been exercised by several sample business operators. The success of the formulation of the united nations commission on international trade law (UNCITRAL) and fashion law on electronic commerce with guide to enactment 1996, aims to harmonise a setting in making transactions of electronic trading.

An instrument fashion law in resolution no. 51 / 162 years 1996 having the main reason, namely (Huala, 2016):

“Convinced that the establishment of a model law facilitating the use of electronic commerce that is acceptable to States with different legal, social, and economic systems, could contribute significantly to the development of harmonious international economic relations, nothing that the model law on electronic commerce was adopted by the commission at its twenty-ninth session after consideration of the observations of



governments and interested organisations, believing that the adoption of the model law on electronic commerce by the commission will assist all states significantly in enhancing their legislation governing the use of alternatives to paper-based methods of communication and storage of information and in formulating such legislation where none currently exists,...”.

The law aims to be the guidebook of the regulations’ maker in a country associated with e-commerce. Several countries have already created regulations that specifically regulates electronic commerce.

At the time of this writing, the author chose the electronic commerce in Malaysia, where the electronic commerce act 658 act 2006, is to provide for legal recognition of electronic of messages in commercial transactions , the use of the electronic of messages to fulfil legal requirements and to disable and facilitate commercial transactions through the use of electronic means and other matters connected therewith.

For example, in the case of the flash sale, losses on consumer made law enforcement must also look at Law of The Republic of Indonesia Number 8 of 1999, concerning Consumer Protection (UU 8/1999). The regulations of consumer law is an effort to create legal certainty for consumers.

The purpose of the UU 8/1999, intended to create a legal certainty and transparency and access to information. The case of the flash sale that led consumers to suffer losses due fraud that have been undertaken by an employee at the company of e-commerce when under review of Law of The Republic of Indonesia Number 8 of 1999, concerning Consumer Protection. So the incident of a gross violation of the colony consumers feel like they are promised to supply the right to be treated or are served only at tables. It’s true nature and shape they shall not be diskirminatif upright and in right standing, and their obligations shall not be fulfilled. Several sample business operators give customers treats or serve them righteousness and uprightness of heart as well as not being discriminating. The reason for the enactment of rules designed to weed out legislation to be able to regulate and protect the interests of consumers, and among the companies were as follows (Celine, 2018):

1. Consumers need a separate arrangement, because the law in a relationship with the dealer, consumer goods and service users for its own sake and not to trade or in the production; and
2. Consumers need a means or legal means as an effort to protect or obtain their rights. There is wrong that occurred due to business operators having traded goods and/or services that do not fit this as expressed in label, etiquette, information, advertising, or sales promotions, or goods and services.

Next to article 9 paragraph (1) letter a Law of The Republic of Indonesia Number 8 of 1999, concerning Consumer Protection states that: “Business operators to offer, promote, advertise





and/or goods and services was not true, and/or these goods meet and/or having reduced prices, special rates, certain standard, style and or a particular method, certain work or accessory”.

Article 10 letter d Law of The Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, said: “Business players to offer goods and/or services intended to offer to sell, promote, advertising, or made an untrue or misleading about the offer discounts or reward interesting offered.”

For this information, consumer product is very much determined so shall that information be right, clear, honest, and responsible. The truth about the contents of a statement or the label is the responsibility of the party who makes and/or broadcasts it (*Ibid*). Details of violations committed by agents cheating on cases of flash sales, could be a sanctioned prison term of a maximum 5 (five) years or criminal fine the most rp 2.000.000.000,00 (two billion rupiah) as arranged on article 62 paragraph (1) of Law of The Republic of Indonesia Number 8 of 1999 concerning Consumer Protection. The right to get restitution must be placed on which is the highest. If the demand proposed by consumers perceived to not have received a response worthy of parties related to it, so consumers are eligible to receive the completion of law, including advocacy (*Ibid*).

Law of The Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, does not specifically give rules relating to electronic trading, so that an assessment of the act of fraudulence in weighing and measuring rpjmn is required, to be also related to Law of The Republic of Indonesia Number 19 of 2016, concerning the amendment to law Number 11 of 2008 concerning Electronic Information and Transactions. Article 28 verse (1) Law of The Republic of Indonesia Number 19 of 2016 concerning amendment to law Number 11 of 2008 concerning Electronic Information and Transactions, stated that: anyone who purposefully and without right spreads fabricated news as well as ordering others that result in the loss to the colony of consumers feels more and electronic transaction.

The act of fraudulently carrying out the irresponsible in the case of the flash sale meets ketentuan article 28 paragraph (1) of Law of The Republic of Indonesia Number 19 of 2016, concerning amendment to law Number 11 of 2008 concerning Electronic Information and Transactions. Because it was spreading, it thinks that misleading the consumers so that they who were originally interested in the promotion and trying to get what they want with cheap prices, will suffer loss caused by the presence of the act of cheating. Sanctions that can be worn on the offender under the act of cheating was criminal prison later than 6 (six) years and / or a fine of the most rp .1.000.000.000,00 (one billion rupiah) .

Based on the discussion above, the case rules undang-undangan about e-commerce still need a lot of improvements and the need to have regulations undang-undangan specifically regulates about electronic trading both in terms, process consumer protection, and setting a rule about foul play that can be done on e-commerce. The condition of the rules undang-



undangan in Indonesia about e-commerce is still a few scattered undang-undang and is hampered by the existence of a lot of gaps, that would be used as an opportunity for the perpetrators to gain advantage without thinking of losses suffered by consumers.

Quoted from the journal law reform, the ministry of commerce proposes a few reasons for the urgency of the preparation of regulations in Indonesia for e-commerce. One reason is philosophical because of the need for ecosystem trade to be electronically safe and efficient for all parties. It is pushes products to a staggering level for consumption (Margaretha and Budi, 2018).

In practice, customers who were cheated do not know to what can they do on e-commerce transactions. Law enforcement in the e-commerce is unlike conventional law enforcement because of the nature of the virtual grime and a follow-up is needed on the sophisticated technology, when furthermore, apart from having a good law, it must be equipped with of infrastructure and human resources mumpuni to uncover the act of cheating.

Indonesia, as other developing countries, slowly began to harmonise e-commerce with the regulation on international law and law in developed countries. Identifying fraud in e-commerce transactions is considered to be very important to be immediately set. No cheating in e-commerce started as widespread and experience needs to be set so that repressive and preventive measures are safe-guarding consumers.

## Conclusion

The protection of the law against the transactions that take place in e-commerce in Indonesia must dealt with in a specific special rule .The transactions that take place in e-commerce are so many and these differ with respect to how the network of the bank conventional with the transactions of commerce both in terms of the form of, the process of , and sarana-prasarana so that , the rules by which we must be able to be with those who went before the process of being renewed. Frauds that have been undertaken by several sample business operators are often used as if there was any opportunity to gain an advantage without considering the losses suffered by the world largest oil consumers.

United Nations Commision on International Trade Law (UNCITRAL) *Mode Law on Electronic Commerce with Guide to Enactment 1996* is the lights of discernment for countries to form of regulations in each part severally and distinct says he knows the country.

In Indonesia, the issue of regulation related to the protection of types of buyers in the transactions that take place e-commerce is borne by their Law of The Republic of Indonesia Number 7 of 2014 concerning Trading, Law of The Republic of Indonesia Number 19 of 2016 concerning amendment to law Number 11 of 2008 concerning Electronic Information and Transactions, and Law of The Republic of Indonesia Number 8 of 1999 concerning Consumer



Protection. There has never been any issues on regulation specifically to adjust to the action of fraudulent in weighing and measuring in the transactions that take place e-commerce made the gap and often lead to fine and waiteth for evil of the laws on so much uncertainty about the world largest oil consumers.



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