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THE REGULATION OF INDONESIAN POSITIVE LAW IN PROTECTING CONSUMER RIGHTS IN E-COMMERCE TRANSACTIONS

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Abstract: *Due to the position of consumers is more risky than producers in terms of capital and knowledge in E-Commerce transactions, the legal protection is needed in order to protect the consumer rights. For this reason, the Consumer Protection Law(UUPK), Electronic Information and Transactions Law(UU ITE), and Arbitration Law are involved in it. This research presents the regulation of Indonesian positive law in protecting consumer rights in E-Commerce transactions with normative juridical legal research methods, E-Commerce Business to Consumer (B2C) transactions, and secondary data through library materials as primary legal material and secondary legal material. The conclusions obtained are: 1) The Consumer Protection Law (UUPK) has been able to protect consumer rights in E-Commerce transactions domestically, but has not been able to protect consumers rights in abroad because it has limited understanding of business agents and its scope, that is individual or business company that is only located in Indonesia. In fact, the development of E-Commerce has become global. The Consumer Protections in Consumer Protection Law (UUPK) are the protection of consumers from business agents, consumers, products and transactions. 2)In Electronic Information and Transactions Law (UU ITE), the protection of consumer rights has been accommodated in the form of electronic documents as legal evidences. It means that the dispute of International E-Commerce can be solved through electronic media. Besides, the choice of law (Jurisdiction) for consumers who have dispute both nationally and internationally is also recognized in this Electronic*

	<p><i>Information and Transactions Law. One of the choices (Jurisdiction) is through Arbitration Court.</i></p> <p>Keywords: consumer rights, E- Commerce, Indonesian Positive Law.</p>
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1. Introduction

The legal protection of consumer is needed because the position of consumers is more risky than producers in E-Commerce transactions in terms of capital and knowledge. Although many studies have discussed this topic, the writer intends to enrich knowledge from different perspectives throughout this paper by describing the regulation of Indonesian positive law in protecting consumer rights in E-commerce transactions. According to Hadjon (1987), the legal protection is divided into two parts; Preventive and Repressive Legal Protection.

The principle of E-Commerce transactions is an agreement that regulates the rights and obligations between consumer and producer. The provisions of the Civil Law Article 1320 apply as a principle in accordance with Article 47 of Electronic Information and Transactions Law, in which rights and obligations are regulated between consumers and producers. Consumers as users of goods / services have several rights and obligations (Nasution, 1995). Literally, consumers are everyone who uses goods and services. In the English-Indonesian dictionary, consumers are users (Az. Nasution, 2006).

E-Commerce is a mechanism of transactions that uses electronic communication network such as internet which is used by developed countries or developing countries. The business operations can be effective and fast because the activities of transactions can no longer be limited by geographical boundaries. Kalalota and Whinson state that E-Commerce is a modern business method that seeks to meet the organizational needs of traders and consumers to reduce production costs (cost products), improve the quality of goods, and improve goods delivery services (M. Arsyad Sanusi, 2001). In E-commerce transactions, the business transactions are more practical without paper (paperless) and between sellers and buyers do not need to meet directly, so that the business can save time and money.

In addition, Purbo and Wahyudi quoted Baum's opinion (Purbo, 2000) as quoted by Badruzaman, define that " E-Commerce is a dynamic sets of technologies , applications, and business processes that link enterprises, consumers and communities through electronic transactions and electronic exchange of goods, services and information".

The use of this electronic media in the business world continues to increase. The results of the survey by the Indonesian Internet Service Providers Association (2018), reports that the penetration of internet service users is about 143.26 million people from the total population of 262 million people or around 54.46 %. The people of Java still dominates the internet users with percentage at 58.08%, the people of Sumatra is at 19.09%, the people of Kalimantan is at 7.97%, the people of Sulawesi is at 6.73%, the people of Bali is at 5.63%, and the people of Maluku-Papua is at 2.49%.

In line with the increasing trend of users in E-Commerce, it needs to be regulated in order to protect the consumer rights. Hartono (2000) says that "Protection of consumers is seen materially and formally as being very important because of the advancement of science and technology as a driver of producer productivity for goods or services that have been produced in the context of business objectives, both directly and indirectly, so that consumers feel the impact. Thus, adequate efforts must be made towards the interests of consumers to immediately find a solution, especially in Indonesia with the complex problems that exist in facing the era of free trade".

Philipus. M. Hadjon states that legal protection is the protection of dignity, recognition of human rights owned by legal subjects based on legal provisions of authority (Philipus, 1987). Meanwhile, according to Setiono, legal protection is an action or effort to protect the public from arbitrary acts by the authorities that are not in accordance with the rule of law to realize order and tranquility so as to enable humans to have their dignity (Setiono, 2004). The point is to protect the public from losses from other people's actions that are against the law (onrechtmatighedaad) or because of broken promises. This applies to the field of civil (business) to recover civil rights.

In accordance with this regulation on consumer protection, it has been regulated by Law No. 8 of 1999 which was ratified on April 20, 1999 Consumer Protection Law (In Indonesia is called UUPK). Moreover, the transaction through e-commerce has also been regulated in Law No. 11 of 2008 concerning Electronic Information and Transactions Law (ITE). In accommodating national and international E-Commerce disputes, it is regulated in Law No.30 of 1999 concerning Arbitration. This is what needs to be studied in this research so that it can be understood what rights are protected by law, and the community know their rights, especially the people who use e-commerce transactions.

Hence, it is very important to know how these consumer protection arrangements are regulated in positive law, especially in the Consumer Protection Law, Electronic Information and Transactions, and the Arbitration Law. Many sides need to be protected in the positive law, but there are at least three sides that need to be discussed in this study, namely; the protection of consumers from business agents, the consumers, the products and the transactions. In this paper, the writer focuses on three sides of the protection of consumer rights law in order to present a clear conclusion.

2. Research Questions

From the explanation above, it is clear that the legal protection for consumers has been regulated separately, that is the Consumer Protection Law (UUPK), but it does not reach business transactions through e-commerce. By the adoption of the Electronic Information and Transactions Law, it gives new strength in the protection of consumer rights in e-commerce businesses. This provision is not regulated in the Indonesian Civil Code Procedure as a basis for the process of consumer protection in court. Therefore, the problems arise which will be explained in this paper. Research questions are:

1. What are the rights of consumers in Consumer Protection Law, Electronic Information and Transactions Law, and Arbitration Law?

2. How is the regulation of Indonesian positive law (Consumer Protection Law, Electronic Information and Transactions Law, and Arbitration Law) in protecting consumer rights in E-Commerce transactions?

3. The Method of the Research

The method of this research is a normative juridical legal research method. According to Soerjono (1986), "Normative juridical research is a study to find out how the positive law of a particular thing, event or problem". In this study, the writer focuses on Business to Consumer (B2C) transactions, namely a sale-purchase through internet between sellers and consumers whose parties or objects of agreement are in different jurisdictions.

In this study, the writer used secondary data. It was obtained through library research. It covers primary legal materials and secondary legal material. The primary legal materials used in this study include: (a) the 1945 Constitution; (b) The Civil Code; (c) Law No. 11 of 2008 concerning Electronic Information and Transactions; (d) Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution; and (e) Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Transactions and Systems as well as Law No. 30 of 1999. The secondary legal material used in this study is legal material that is supportive and provides an explanation of primary legal material, in the form of books, papers, reports or research results, scientific writings, materials or articles from the internet regarding international electronic transaction jurisdiction.

4. Result and Discussion

4.1. The Protection of Consumers rights from the Side of Business Agents

In the Consumer Protection Law (UUPK) in Article 7, the obligations of business agents shall be:

- a. having a good intention in conducting business activities;
- b. providing correct, clear and honest information about the condition and guarantee of goods and/or services and providing explanation about uses, repair and maintenance;
- c. treating or serving consumers correctly and honestly and in discriminatory;
- d. guaranteeing the quality of the goods and/or services produced and/or traded on the basis of the prevailing standard provisions on the quality of goods and/or services;
- e. providing an opportunity to consumers to test and/or try certain goods and/or services and providing an assurance and/or a guarantee for the goods made and/or traded;
- f. giving compensation and or refund for the losses caused by the use, application and utilization of goods and/or services traded;
- g. giving compensation and/or refund if the goods and/or services received or utilized are not up to the agreement.

In Electronic Information and Transactions Law, Chapter 5 Article 1, it has regulated the protection of business agents and consumers who admit that electronic document/information are as legal evidences. "...Electronic Information and / or Electronic Documents and / or the printouts there are valid legal evidence..." It means that E-Commerce transactions of sellers and buyers have been protected by this article because this legal evidence is a guideline that is made by parties whether in normal circumstances or there is no dispute or in a dispute. The existence of these documents is very important because it regulates each of their rights and obligations. In the document, it can be seen whether achievements have been made or the event of default. If disputes arise in court or

outside the court, the evidence of this letter is the initial guideline, so is the importance of acknowledging this document evidence in e-commerce transactions.

From the business actor's side, it is also regulated in Article 9 of the Law on the responsibility of contracts and products; Business actors that offer products through Electronic Systems must make available full and true information about contractual conditions, producers, and offered products. If the consumer wants to buy goods offered through electronics, the business actor must be clear in terms of legal subjects, as well as the source of goods such as customs and excise and need to check the existence of the goods and the specifications of the goods.

Furthermore, in Article 17 of Section 2 of Electronic Information and Transactions Law is concerning the principles of responsibility for mistakes, the responsibility for negligence, and principles of responsibility without error. Guarantee that the private sector in running an e-commerce business, but must have good intentions in conducting its business and does not conflict with Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Transactions and Systems. Whereas, if a dispute arises in the Electronic Information and Transactions Law, it is regulated in article 38 and article 39; any Person may institute actions to provide Electronic Systems and / or detriment, the society may use class information systems and / or use Information Technology to the society loss, in accordance with Rules, the Civil actions shall be instituted in accordance with the provisions of Rules, Then may resolve through arbitration or other alternative dispute resolution institutions in accordance with provisions of Rules.

4.2. The Protection of Consumers Rights from the Side of Consumers

In the Consumer Protection Law (UUPK) No. 8 of 1999 concerning consumer rights that must be protected has been regulated in article 4, that are: the right to comfort, security and safety in using goods and / or services; The importance of the right to comfort, security and safety in using goods and / or services for consumers must be realized because satisfaction is the customer's response to the fulfilment of their needs. It means a form of privilege of an item or service or service itself, providing a level of comfort associated with meeting a need, including meeting needs under expectations or meeting expectations or meeting needs exceeding customer expectations (Richard Oliver, 1997). This convenience also becomes the basis for consumers to decide to buy or cancel goods that are traded,.... a convenience for consumers is also a dimension of convenience of decisions on consumer perceptions of time, cost, and effort for service purchase or use decisions (Berry et al. in Fandy Tjiptono, 2004).

Consumers are free to choose goods and / or services and obtain goods and / services that are in accordance with the exchange rate and the requirements and guaranteed guarantees, must find correct, clear and honest information about the requirements and guarantees of goods and / services. They also need to know the responsible party for the goods sold to express their opinions and complaints about the goods and / services used. Consumers must understand whether there is advocacy of protection and protection given to customers, consumers must obtain guidance and consumer education, consumers must feel information that is true and honest and not discriminatory, consumers must get compensation, compensation and / or replacement, change goods and / or services received not by agreement or not in accordance with the actual agreement.

In addition to understand these rights in UUPK, it has also been regulated the issue of the standard agreement clause, article 1 paragraph 10 of UUPK, which the purpose of using the standard clause in actual business activities is to save time in each sale-purchase activity. It is not efficient if every sale-purchase transaction occurs between the seller and the buyer discuss about the contents of the sale-purchase contract. Therefore, in a standard contract, clauses are generally used in the sale-contract.

16 However, UUPK still has weaknesses. It cannot reach businesses actors that are domiciled in foreign countries. It can be seen in the UUPK in Article 1 point 3 which states “A business agent shall be individual or a business company, either in the form of a statutory body or otherwise, set up and domiciled or undertaking activities in the jurisdiction of the state of the Republic of Indonesia, both individually and jointly through agreements on the running of business activities in various economic areas”. Based on the understanding of the business actors above, the scope of the UUPK is merely a business actor engaged in the jurisdiction of the Republic of Indonesia.

4.3. The Protection of Consumers Rights from the Side of Products and Transactions

8 Basically, the Electronic Transaction is a contract model that is the same as a conventional sale-purchase contract carried out by the community in general. Conventional sale-purchase which is carried out by the community is currently carried out based on the provisions stipulated in the Civil Code. Therefore, it is not much different from the conventional sale-purchase agreement so that the general principles in the agreement such as the principle of freedom of contract, the principle of consensualism, the principle of pactasuntservanda, and also the principle of good faith also apply in Electronic Transactions.

The main different is between the buyers and sellers do not meet each other directly. They meet each other only through electronic media, and goods sold are only in the form of images, and that consumers tend to have more risks such as the risk of goods which are not being sent after the money is transferred, the misused of consumer identity, the goods received do not match with the wishes of consumers and so on. So, we need to know how to regulate the consumer protection in Consumer Protection Law on this E-Commerce transaction.

5 The weakness of UUPK has been accommodated in Law No. 11 of 2008 concerning Electronic Information and Transactions Law Article 18 paragraph (2) which states that the Electronic Information and Transactions they enter, but the Electronic Information and Transactions Law does not regulate standard clauses as stipulated in the UUPK, so that consumers must submit to the rules made by business actors.

Article 15 of the Electronic Information and Transactions states that information systems and electronic transactions must be carried out safely, reliably and operate properly. The implementation of an electronic system must be responsible for the system being held. To the extent that it is not determined by a separate law, every implementation of an electronic system must operate an electronic system in a minimum, which must be carried out by an electronic system operator.

7 Every person who breaks the provisions is responsible for any losses and legal consequences that arise. This means that each person is responsible for all losses incurred due to violations committed against providing security for the electronic signature. Although this E-Commerce transaction is the culprit of the business world, the government must also provide supervision.

10 The Electronic Information and Transactions Law also requires business actors to provide complete information on the products they offer in accordance with Article 49; Business actors offering products through the Electronic System must provide complete and correct information relating to contract terms, producers and products offered. He / She is obliged to provide clear information about the contract or advertisement offer. The deadline for consumers to return goods sent if it is not in accordance with the agreement or there are hidden defects, convey information about the goods that have been sent, cannot burden consumers about the obligation to pay for goods sent without a contract basis, when the parties reach an agreement.

8 The agreement occurs when the transaction offered that is sent by the sender has been received and approved by the recipient, and can be done by: a. Act of acceptance of approval; or b. Acts of acceptance of and / or use of objects by Electronic System Users. In conducting Electronic Transactions, the parties must guarantee: a. providing correct data and information; and b. availability of facilities and services and settlement of complaints. In the implementation of e-commerce Transactions, the parties are obliged to make a legal choice in proportion to the implementation of the Transaction.

12 One of the legal options is to apply Arbitration Law, No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Arbitration Law), that e-commerce activities are entirely online, and the resolution of the dispute is conducted online considering that the parties are located in different countries. If dispute resolution is done by meeting physically, it will take a lot of time and costs.

12 The Arbitration Act provides the possibility of online dispute resolution using e-mail. It is stated in the provisions of Article 4 paragraph (3) of Law No. 30 of 1999 that "The agreement for resolution of disputes by arbitration is contained in an exchange of correspondence, including letters, telexes, telegrams, faxes, e-mails, or any other form of communication, the same shall be accompanied by a record of receipt of such correspondence by the parties".

5. Conclusion

From the result and discussion above, it can be concluded that:

1. The Consumer Protection Law (UUPK) has been able to protect consumer rights in E-Commerce transactions domestically, but has not been able to protect consumer rights in abroad because it has limited understanding of business agents and its scope, that is individual or business company that is only located in Indonesia. In fact, the development of E-Commerce has become global. The Consumer Protections in Consumer Protection Law (UUPK) are the protection of consumers from business agents, consumers, products and transactions
2. In Electronic Information and Transactions Law (UU ITE), the protection of consumer rights has been accommodated in the form of electronic documents as legal evidences. It means that the dispute of International E-Commerce can be solved through electronic media. Besides, the choice of law (Jurisdiction) for consumers who have dispute both nationally and internationally is also recognized in this Electronic Information and Transactions Law. One of the choices (Jurisdiction) is through Arbitration Court.

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